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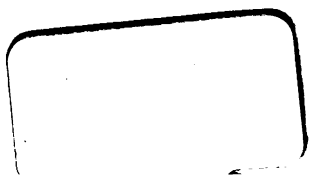
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PROCEEDINGS  
OF THE  
TEXAS BAR ASSOCIATION

AT ITS  
ORGANIZATION SESSION,  
HELD IN THE CITY OF GALVESTON, JULY 15 AND 17, 1882

WITH THE  
OFFICERS, STANDING COMMITTEES, AND ROLL  
OF MEMBERS

FOR THE YEAR 1882.

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GALVESTON :  
PRINTED BY ORDER OF THE ASSOCIATION.  
1882.

L11148

FEB 4 1936

These proceedings are published by authority and distributed to members by the Association.

CHARLES S. MORSE, *Secretary.*

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The First Annual Meeting of the Association will be held in Galveston, commencing December 12, 1882.

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*Printed by E. W. Swindells, Austin, Texas.*

# PROCEEDINGS

OF THE

## ORGANIZATION SESSION

OF THE

# TEXAS BAR ASSOCIATION.

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### *FIRST DAY.*—OPENING SESSION.

BE IT REMEMBERED, that at the organization session of the Texas Bar Association, held in the city of Galveston, on the fifteenth and seventeenth days of July, A. D. 1882, the following proceedings were had:

The meeting was called to order, at 10 o'clock a. m., by Hon. H. J. Labatt, of Galveston, who stated that the first thing in order, was to effect a temporary organization.

On motion of Hon. M. F. Mott, of Galveston, Hon. J. H. McLeary, of San Antonio, was unanimously elected temporary President.

On being escorted to the chair, General McLeary addressed the meeting as follows :

*Gentlemen of the Bar Texas :*

I most heartily thank you for this unexpected honor. I can think of no more pleasing compliment that could be given any lawyer, than to be called to this task by his brethren. It is with the greatest gratification that I assume the chair for the few hours necessary for a temporary organization.

We have been warmly welcomed to the Island City. We all know its many attractions and its generous hospitality so often shown to the people of our State.

I am not sufficiently posted on the subject to be able to correctly state the objects of this meeting, or fully to explain the purposes to be accomplished by this effort at co-operation by the Bar of Texas; and I hope some one who has given the question more attention will perform that duty.

I know that one object to be accomplished is to bind the members of our very useful and honorable profession more strongly to each other in the bonds of fraternal union. It is quite remarkable that a greater degree of good feeling prevails

among members of the bar than between the members of any other profession in civilized life. They meet in the court-room and engage in earnest discussion, sometimes running into acrimonious contest; hot blood may arise, but after court adjourns everything cools down, and they are all good fellows together, as before. [Applause.]

I sincerely hope that, if no other good is accomplished, a stronger sentiment of fraternity and good-will among the members of the Texas Bar may be engendered, and that harmony and uniformity among the county bar associations may be secured by the formation of the State Bar Association. [Continued applause.]

The election of a temporary secretary is the next thing in order.

George T. Todd, Esq., of Jefferson, nominated Charles S. Morse, of Austin, for temporary secretary, and he was elected by acclamation.

The Chairman then read the following call for this meeting:

"The undersigned members of the bench and bar hereby unite in a call for a bar meeting, to be held at Galveston, on July 15, 1882, for the purpose of organizing a State Bar Association.

It is earnestly hoped that there will be a full representation of the entire bar of the State.

O. M. ROBERTS, ex-Chief Justice,

GEO. F. MOORE, ex-Chief Justice,

ROBERT S. GOULD,

M. H. BONNER,

JOHN W. STAYTON,

JOHN P. WHITE,

J. M. HURT,

SAM. A. WILLSON,

RICH. S. WALKER,

A. T. WATTS,

W. S. DELANEY,

A. S. WALKER,

J. H. MCLEARY,

A. W. TERRELL,

A. M. JACKSON,

C. S. WEST,

JOHN B. RECTOR,

W. P. BALLINGER,

T. N. WAUL,

A. H. WILLIE,

ROBT. G. STREET,

C. L. CLEVELAND,

THROCKMORTON, BROWN & BRYANT,

F. CHAS. HUME,

PHILIP C. TUOKER,

FRANK B. SEXTON,

THOS. J. DEVINE,

JACOB WELDER,

JAMES F. MILLER,

THOS. M. HARWOOD,

SIMKINS & SIMKINS,

BAKER & BOTTS,

HUTCHESON & CARRINGTON,

GEORGE T. TODD,

WALTER ACKER,

J. A. CARROLL,

MARSHAL FULTON,

E. G. BOWER,

RICHARD MORGAN, JR.,

A. H. FIELD,

A. W. DEBERRY,

JOHN E. ELGIN,

SAYLES & BASSETT,

HARE & HEAD,

WOODS, WILKINS & CUNNINGHAM,

MAKEMSON, FISHER & PRICE.

H. J. Labatt, Esq., of Galveston, moved that a committee of five be appointed to report the names of officers for a permanent organization.

This motion was withdrawn as being premature, and Hon. T. N. Waul, of Galveston, moved that a committee of five be appointed to frame a Constitution and By-Laws.

Chas. D. Grace, Esq., of Bonham, thought the Convention should first be organized before committees could be appointed.

General Waul replied:

This is a call for a meeting of the members of the Bar of the State. It is nothing more nor less than a convention of the members of the Bar. It is a meeting, and a large meeting, of the members of the Bar. No credentials to this Convention are necessary. It may be required to register their names, but to participate in this meeting it is only necessary that those who do so should be members of the Bar of Texas.

Chas. L. Cleveland, Esq., of Galveston, moved, as a preliminary question as to who were delegates, that all licensed attorneys in this State, who are now in good standing and in attendance upon this meeting, be declared delegates to this Convention, and as such be permitted to participate in its organization.

Geo. T. Todd, Esq., in seconding this motion, said:

I consider every licensed lawyer certainly a member of the Convention. All are here by invitation—an invitation signed by every member of the highest courts of our State—and members of the Bar, responding to the invitation, have the right to be heard here. No one has been invited to attend this meeting except such as favor a State Association. The presence of the members of the Bar is sufficient to show that their purpose and desire is to form the organization, and therefore it is useless to put the question whether it is the sense of the meeting that the Association be organized. When the proper committee presents its plan of organization, we can then permanently organize. I therefore favor the motion that all licensed attorneys take part in the proceedings.

Motion adopted, and all those present were, by motion, required to furnish their names to the Secretary for enrollment.

N. O. Green, Esq., of San Antonio, moved that a committee of five be appointed to report an order of procedure.

Motion adopted, and the following committee appointed: Hons. M. F. Mott, T. J. Devine, B. H. Bassett, E. J. Simkins and George McCormick.

On motion, N. O. Green, Esq., was added to the committee.

F. M. Spencer, Esq., of Galveston, moved that a committee of eleven, consisting of one from each Congressional District, be appointed on permanent organization.

Carried, and the following committee was appointed:

First District—T. W. Ford, of Jasper.

Second District—W. D. Wood, of Centreville.



Third District—A. Pope, of Marshall.

Fourth District—H. McKay, of Jefferson.

Fifth District—J. A. Carroll, of Denton.

Sixth District—J. W. Brown, of Cleburne.

Seventh District—C. L. Cleveland, of Galveston.

Eighth District—D. P. Marr, of Pleasanton.

Ninth District—L. C. Alexander, of Waco.

Tenth District—J. T. Coffee, of Georgetown.

Eleventh District—I. N. Roach, of Weatherford.

W. S. Robson, Esq., of LaGrange, moved that a committee of five be appointed to draft a Constitution for the government of the Association.

Motion adopted, and the following committee appointed: Hons. T. N. Waul, X. B. Saunders, W. S. Robson, C. C. Garrett and N. O. Green. •

On motion, Robert G. Street, Esq., was added to the committee.

On motion, the meeting adjourned until three o'clock p. m.

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### AFTERNOON SESSION.

The meeting was called to order at three o'clock p. m., and business proceeded with.

The following report of the Committee on Order of Procedure was read and adopted:

*To the Hon. J. H. McLeary, Temporary Chairman State Bar Association:*

The Committee on Order of Procedure recommend that the following be adopted as the order of business at this meeting:

1. Enrollment of members responding to the call. (Already provided for.)
2. Appointment of a Committee on Permanent Organization. (Already provided for.)
3. Appointment of a Committee on Constitution and By-Laws.
4. Election and installation of permanent officers.
5. Adoption of Constitution and By-Laws.
6. Selection of officers and permanent committees-provided for in the Constitution and By-Laws.
7. Selection of time and place for next meeting.

8. The sessions of the present meeting shall be as follows: Saturday, July 15, 3 p. m. to 6 p. m., and from 8 p. m. to 10 p. m., and on Monday, July 17, from 9 a. m. to 12 m., and from 3 p. m. till business shall be disposed of.

All of which is respectfully submitted.

M. F. MOTT, *Chairman*,  
T. J. DEVINE,  
GEO. McCORMICK,  
B. H. BASSETT,  
E. J. SIMPKINS,  
N. O. GREEN,

*Committee.*

The Committee on Permanent Organization made the following report, which was adopted:

*To the Hon J. H. McLeary, Temporary President:*

Your Committee on Permanent Organization beg leave to make the following report:

They recommend for permanent officers of this body: Hon. Thomas J. Devine, President; W. J. Wingate, of Newton; T. T. Gammage, of Anderson; W. H. Pope, of Harrison; C. S. Todd, of Bowie; Silas Hare, of Grayson; Joe Abbott, of Hill; T. N. Waul, of Galveston; Geo. McCormick, of Colorado; Geo. Clark, of McLennan; D. S. Cheshier, of Williamson, and E. L. Shropshire, of Comanche, Vice-Presidents; Chas. S. Morse, Secretary; J. G. Garrison, Assistant Secretary; Wm. P. Owens, Sergeant-at-Arms; Davis A. Spencer, Assistant Sergeant-at-Arms.

That misapprehension may be avoided, your committee desire to state further, that they conceived it to be their duty to simply recommend such officers as would enable this body to proceed to a complete organization, under such Constitution as may be adopted, and that it is not their purpose to suggest either what officers should be provided for by the Constitution, or who should fill them. That there may be pending a complete organization of a bar association, some certain rules for the guidance of our deliberations, we recommend that, until otherwise provided, this body be governed by the present rules of the House of Representatives of Texas, as far as the same may be applicable.

W. D. WOOD, *Chairman.*

L. C. ALEXANDER, *Secretary.*

The report was unanimously adopted, and Judge J. M. Maxey, of Meridian, and M. F. Mott, of Galveston, were appointed to escort Hon. Thos. J. Devine to the chair as permanent President.

Upon being introduced to the Association, Judge Devine said:

I return to you my sincere thanks for the honor you have conferred in selecting me to the presidency of this body. I mean this in no idle sense or general term, but in its true acceptation; for the honor you have conferred, which I must say was entirely unexpected, is one I fully appreciate.

The preamble of the call sets forth the objects and aims of our Association. It embodies, in substance, the objects set forth for the New York Bar Association,

which has been said is a model expression, namely: to cultivate the science of jurisprudence, to promote reforms in the law, to facilitate the administration of justice, and to elevate the standard of integrity, honor and courtesy in the legal profession. I feel confident, gentlemen, from what I know of many of you personally, and what I know of all of you by reputation, that you will come up in this Association to this preamble, or to the standard to which I have referred. I believe in associations of this character, representing so largely the intelligence and patriotism of Texas, and that you will work continuously and wisely to effect the objects that are sought. Again I thank you sincerely for the honor conferred by such a body of intelligent, patriotic and true citizens. It may be said of the bar, that they have never failed their country in any age or time. Among the foremost men of the French Revolution who struck from the oppressed people the shackles of despotism were the lawyers. You well remember the part the lawyers took in the cause of liberty in England. They were not alone foremost in legislative assemblies, but in the battlefield, as you did in the Lost Cause, they bared their bosoms to the storm of war and gave their lives for their country. [Applause.]

On motion of Mr. Labatt, the Vice-Presidents took places on the platform.

The Committee on Constitution made the following report:

*To the Hon. Thos. J. Devine, President of the Texas Bar Association:*

Your Committee on Constitution beg leave to report, that they have duly considered the matters and things referred to them, and report herewith a Constitution as the result of their labors. They ask that the same be received, and that they be discharged from further duty. Respectfully submitted,

T. N. WAUL, *Chairman*,  
X. B. SAUNDERS,  
N. O. GREEN,  
ROBT. G. STREET,  
C. C. GARRETT,  
W. S. ROBSON.

Committee.

The report was received, and the Constitution, as amended, was adopted, and is as follows:

## CONSTITUTION.

### ARTICLE I.—NAME AND OBJECTS OF THE ASSOCIATION.

SECTION 1. This Association shall be called the TEXAS BAR ASSOCIATION.

SEC. 2. Its objects shall be to advance the science of jurisprudence, promote the uniformity of legislation in the administration of justice throughout the State, uphold the honor of the profession of the law, and encourage cordial intercourse among its members.

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ARTICLE II.—MEMBERSHIP.

SECTION 1. Any attorney of the Texas bar, in honorable standing, upon his written application, may be admitted to membership at any regular meeting of the Association.

SEC. 2. Such application shall be referred to the Board of Directors, who shall report the same to the Association; and if said report be favorable, a ballot shall be taken, and if four-fifths of the members voting shall be in favor of the applicant he shall be declared elected; and if he shall sign the Constitution and pay his admission fee within ten days after he shall be notified of his election, he shall be placed on the roll of members.

## ARTICLE III.—OFFICERS AND THEIR DUTIES.

SECTION 1. The officers of the Association shall be a President, a Vice-President, a Secretary, and a Treasurer, who shall be chosen by ballot at a regular meeting, by a majority of the members present and voting.

SEC. 2. There shall be a Board of Directors, five in number, elected at the same time and in the same manner with the officers; and the President and Vice-President shall be ex-officio members of the Board.

SEC. 3. The officers and Directors shall hold their places for one year, and until their successors shall be elected; provided, that the same person shall not be elected President two years in succession.

SEC. 4. The duties of officers shall be such as usually devolve upon such positions, and may be regulated and prescribed from time to time by the Constitution, By-Laws or resolutions of the Association.

SEC. 5. The Board of Directors shall have exclusive authority, and shall exercise executive supervision over the affairs of the Association between its meetings.

SEC. 6. Vacancies in the offices and Board of Directors shall be filled by the Board, the concurrence of a majority of whom shall be necessary to a choice.

## ARTICLE IV.—COMMITTEES.

SECTION 1. The following committees shall be appointed annually by the President for the year ensuing, and shall consist of five members each: On Jurisprudence and Law Reform, on Judicial Administration and Remedial Procedure, on Legal Education and Admission to the Bar, on Commercial Law, on Publication, on Grievances and Discipline.

SEC. 2. A committee of three, of whom the Secretary shall always be one, shall be appointed by the President at each annual meeting of the Association, whose duty it shall be to report to the next meeting the names of all members who shall in the interval have died, with such notices of them as shall, in the discretion of the committee, be proper.

#### ARTICLE V.—GENERAL POWERS.

SECTION 1. This Association shall have power to impose fines, assess fees, and establish by-laws for its government. It shall have power to remove officers, and suspend or expel members for good cause, upon written charges exhibited against him by a member, and due notice given him of the charges, and of the time they will be brought before the Association.

SEC. 2. The By-Laws shall prescribe the assessments to be levied on the members for the support of the Association and the promotion of its objects.

#### ARTICLE VI.—QUORUM.

SECTION 1. Fifty members in regular standing shall constitute a quorum for the transaction of business.

#### ARTICLE VII.—ANNUAL ADDRESS.

SECTION 1. The President shall open each meeting of the Association with an address, in which he shall communicate the noteworthy changes in statutory and constitutional law, and especially such changes as affect the development and progress of the law and the administration of justice.

#### ARTICLE VIII.—MEETINGS.

SECTION 1. A majority of the members present at an annual meeting of this Association shall designate the time and place for holding the next annual meeting.

#### ARTICLE IX.—AMENDMENTS.

SECTION 1. All propositions to alter, amend or add to this Constitution shall be made in writing at a meeting of the Association, and filed with the Secretary at least one month before being acted upon, and shall not be adopted without the concurrence of two-thirds of all the members present.

## ARTICLE X.—DUES.

SECTION 1. Each member of the Association shall pay to the secretary the sum of \$2.50 as annual dues.

On motion, the Committee on Constitution was appointed a committee to report By-Laws and Rules for the Association.

Hon. W. S. Simkins, of Corsicana, offered the following resolution, which was, on motion, referred to the Committee on By-Laws:

*Resolved*, That neither the availability of men for political preferment, nor the advisability of measures which enter into the current politics of the day, shall ever be introduced or discussed in the proceedings of the State Bar Association of Texas.

It was moved and carried that the Association proceed to the election of officers, to hold until the next meeting of this Association.

The following officers were elected:

Hon. Thos. J. Devine, of San Antonio, President.

Hon. B. H. Bassett, of Brenham, Vice-President.

Chas. S. Morse, Esq., of Austin, Secretary.

Hon. M. F. Mott, of Galveston, Treasurer.

Hons. W. P. Ballinger, of Galveston; Geo. McCormick, of Columbus; L. C. Grothaus, of San Antonio; X. B. Saunders, of Belton, and E. J. Simkins, of Corsicana, Directors.

On motion, the Association adjourned until Monday morning at nine o'clock.

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SECOND DAY.

MONDAY MORNING, July 17, 1882.

The Association was called to order by the President, Hon. Thos. J. Devine, at nine o'clock a. m.

Hon. B. H. Bassett, Vice-President, was introduced and conducted to his seat on the stand.

The Secretary read the proceedings of Saturday's session, which were adopted.

Reports of committees being called for, General T. N. Waul, chairman of the Committee on By-Laws, made the following report:

*To the Hon. Thos. J. Devine, President Texas Bar Association:*

We beg leave to report herewith a code of By-Laws for the government of this Association:

## BY-LAWS.

## ARTICLE I.—PRESIDING OFFICERS.

SECTION 1. The President, and in his absence the Vice-President, shall preside at all meetings of the Association; if neither of these officers be present, a president pro tem. shall be chosen by and from the attending members.

## ARTICLE II.—ADDRESSES AND ESSAYS.

SECTION 1. The Board of Directors, at its first meeting after each annual meeting, shall select some person to make an address at the next annual meeting, and not exceeding six persons to read papers.

## ARTICLE III.—ANNUAL MEETINGS AND ORDER OF BUSINESS.

SECTION 1. The order of exercises at the annual meetings shall be as follows:

1. Opening address of the President.
2. The nomination and election of members.
3. Report of the Board of Directors.
4. Election of the Board of Directors.
5. Reports of the Secretary and Treasurer.
6. Reports of standing committees, as follows: On Jurisprudence and Law Reform; on Judicial Administration and Remedial Procedure; on Legal Education and Admission to the Bar; on Commercial Law; on Publications; on Grievances and Discipline.
7. Reports of special committees.
8. The nomination of officers.
9. Miscellaneous business.
10. The election of officers.
11. The annual address, to be delivered by the person selected by the Board of Directors, shall be made at the morning session of the second day of the annual meeting.

SEC. 2. This order of business may be changed at any meeting by a vote of a majority of the members present; and, except as otherwise provided by the Constitution or By-Laws, the usual parliamentary rules and orders will govern the proceedings.

SEC. 3. No person shall speak more than ten minutes at a time, nor more than twice on the same subject.

SEC. 4. A stenographer shall be employed at each annual meeting.

SEC. 5. Each county bar association may annually appoint delegates, not exceeding three in number, to the next meeting of the Association, and such delegates shall be entitled to all the privileges of membership at and during said meeting.

SEC. 6. All papers read before the Association shall be lodged with the Secretary. The annual address of the President, the reports of the committees and proceedings at the annual meetings shall be printed, but no other address made or paper read or presented shall be printed except by order of the Committee on Publication.

#### ARTICLE IV.—MEMBERSHIP AND DUES.

SECTION 1. The initiation fee to entitle a person to membership shall be \$5, which shall include the annual dues for the first year.

SEC. 2. The annual dues shall be payable at the annual meeting in advance, and should any member neglect to pay them for any year, at or before the next annual meeting, he shall cease to be a member. The Secretary shall give notice of this By-Law, within sixty days after each meeting, to all members in default.

#### ARTICLE V.—OFFICERS AND COMMITTEES.

SECTION 1. The terms of office of all officers elected at the annual meeting shall commence at the adjournment thereof, except the Board of Directors, whose term of office shall commence immediately upon their election.

SEC. 2. The President shall appoint all committees, except the Committee on Publication, within thirty days after the annual meeting, and shall announce them to the Secretary, who shall promptly give notice to the persons appointed. The Committee on Publication shall be appointed on the first day of each meeting.

SEC. 3. The Secretary's and Treasurer's reports shall be examined and audited by the Board of Directors before their presentation to the Association.

SEC. 4. The Board of Directors and all standing committees shall meet on the day preceeding each annual meeting, at the place where the same is to be held, at such hour as their respective chairmen shall appoint; and should any member of any committee be absent, the vacancy may be filled by the members of the committee present.



SEC. 5. The Committee on Publication shall meet within one month after each annual meeting, at such time and place as the chairman shall appoint.

SEC. 6. Special meetings of any committee shall be held at such times and places as the chairman thereof may appoint; reasonable notice shall be given by him to each member by mail.

#### ARTICLE VI.—DUTIES OF COMMITTEES.

SECTION 1. It shall be the duty of the Committee on Jurisprudence and Law Reform to consider and report to the Association such amendments of the law as in its opinion should be adopted; also, to scrutinize proposed changes in the law, and, when necessary, report upon the same.

SEC. 2. It shall be the duty of the Committee on Judicial Administration and Remedial Procedure to observe the practical workings of the judicial system of the State, and recommend, by written or printed report, from time to time, any changes therein which observation or experience may suggest.

SEC. 3. It shall be the duty of the Committee on Legal Education and Admission to the Bar to report the most suitable means for promoting and facilitating the study of the law, and the necessity or propriety of elevating the standard of qualifications for admission to the bar, and the best means for accomplishing that object.

SEC. 4. It shall be the duty of the Committee on Commercial Law to report the best means to produce uniformity in commercial law and usages.

SEC. 5. The Committee on Publication shall pass upon and have printed all papers, should they deem them of sufficient importance, except as it is otherwise provided by the Constitution and By-Laws.

SEC. 6. The Committee on Grievances and Discipline shall report as to the best means of upholding the honor and dignity of the law in the professional intercourse among the members of this Association. All complaints against any member of this Association shall be presented to this committee, and if the committee shall be of the opinion that the matters alleged are of sufficient importance, they will determine upon the course of procedure for the trial of the same, and shall give notice to the party charged of the nature of the complaint and the time of the trial thereof by the Association, all of which the complainant shall also be notified of by the committee.

## ARTICLE VII.—AMENDMENTS.

SECTION 1. These By-Laws may be amended at any meeting of the Association, by a vote of two-thirds of those present, provided that a copy of the proposed amendment shall have been filed with the Secretary on or before the first day of such annual meeting.

Your committee would further report that they have had referred to them the following resolution offered by W. S. Simkins, Esq., of Corsicana, viz:

*Resolved*, That neither the availability of men for political preferment, nor the advisability of measures which enter into the current politics of the day, shall ever be introduced or discussed in the proceedings of the State Bar Association of Texas.

And after having carefully considered the same, would most respectfully report it back with the recommendation that it be not adopted, for the reason that the objects sought to be attained by said resolution are already provided for and excluded by the preamble to the Constitution.

Respectfully submitted,

T. N. WAUL, *Chairman*,  
W. S. ROBSON,  
X. B. SAUNDERS,  
C. C. GARRETT,  
N. O. GREEN.

Committee.

On motion of T. T. Gammage, Esq., of Palestine, the report was unanimously adopted and the committee discharged.

Hon. T. N. Waul, of Galveston, offered the following resolution, which was adopted:

*Resolved*, That the President appoint three delegates to represent this Association at the fifth annual meeting of the National Bar Association, to be held at Saratoga Springs, New York, on August 8, 9, 10 and 11, A. D. 1882.

The following resolution, by W. S. Robson, Esq., of LaGrange, was adopted:

*Resolved*, 1. That the Secretary of this Association be and he is hereby authorized to have lithographed certificates of membership, and that he issue the same to all members of the organization session, and also certificates of like character for members to be admitted hereafter.

2. That the Secretary have all necessary blanks printed, and purchase such books and stationery as may be necessary for the proper discharge of his duties.

W. S. Robson, Esq., also offered the following, which was adopted:

*Resolved*, That the President, Secretary, and Board of Directors are hereby auth-

orized and instructed to file with the proper authorities articles of incorporation, under the general incorporation laws of this State, and to take such steps as are best calculated to insure the speedy incorporation of this Association.

Geo. T. Todd, Esq., of Jefferson, offered the following resolution:

WHEREAS, It is necessary that this Association have a legal domicile, and as the officers indicated in Mr. Robson's resolution are not empowered to fix that domicile; therefore, be it

*Resolved*, That the legal domicile, for the purposes to be set forth in the charter of this Association, shall be the city of Austin.

Hon. J. H. McLeary, of San Antonio, moved to amend by striking out Austin and inserting Galveston.

Carried, and the resolution as amended was adopted.

J. R. Mason, Esq., of San Antonio, offered the following:

*Resolved*, That the Texas Bar Association respectfully petition the Congress of the United States to take the necessary steps to abolish the distinction between law and equity in the mode of procedure and practice in the trial of causes in the Federal Courts, and that the Secretary be instructed to forward a copy of this resolution to the United States Senate and House of Representatives.

On motion of N. W. Finley, Esq., of Tyler, the resolution was referred to the Committee on Jurisprudence, with instruction to report on the same at the next meeting of the Association.

A. K. Swan, Esq., of Henrietta, offered the following resolution, which was adopted:

*Resolved*, That the Secretary of this Association be requested and authorized to have the proceedings of this Association printed in pamphlet form; said proceedings to contain the Constitution and By-Laws as adopted, and the name and residence of each member participating in its organization, including such names of those not present as have been furnished him for enrollment, and that a copy of said proceedings be forwarded to each member.

W. S. Robson, Esq., of LaGrange, offered the following resolution, which was referred to the Committee on Publication, with instructions to report at the next meeting of the Association:

WHEREAS, The necessities of the various local bars of this State demand a weekly publication of the opinions of our Supreme and Appellate Courts, as they are delivered from the bench; therefore, be it

*Resolved*, 1. That the Texas Bar Association recommend that such a publication be established.

2. That this resolution be referred to the Committee on Publication, and that they be requested to take such steps as to them may seem best.

3. That, should such a publication be established, we recommend that the same be liberally supported by the Bar of this State.

The President appointed the following delegates to represent the Association at the National Convention to be held at Saratoga: John

Sayles, of Brenham; Richard Morgan, Jr., of Dallas; Jacob Wælder, of San Antonio. Alternates: A. W. Terrell, of Austin; W. L. Crawford, of Dallas; William Steadman, of Marshall.

The President appointed the following Committee on Publication: W. P. Ballinger, of Galveston; Silas Hare, of Sherman; J. H. McLeary, of San Antonio; George T. Todd, of Jefferson; W. S. Robson, of Fayette.

Hon. T. N. Waul, as chairman of the Committee on Constitution, and also on By-Laws, being called for, said:

I have heard inquiries as to what purpose the dues of \$2.50 are being paid. As the Committee understand it, this payment covers all that is due until the next annual meeting, or from the first to the second annual meeting, to be held in 1883.

Hon. J. H. McLeary, of San Antonio, offered the following resolution, which was adopted:

*Resolved*, That the next meeting of this Association be held in the city of Galveston, on the second Tuesday in December, A. D. 1882.

The following resolution by Hon. T. N. Waul was adopted:

*Resolved*, That the books of this Association be kept open until Thursday next at noon, to enable lawyers to enroll their names, pay their dues and become members of this Association.

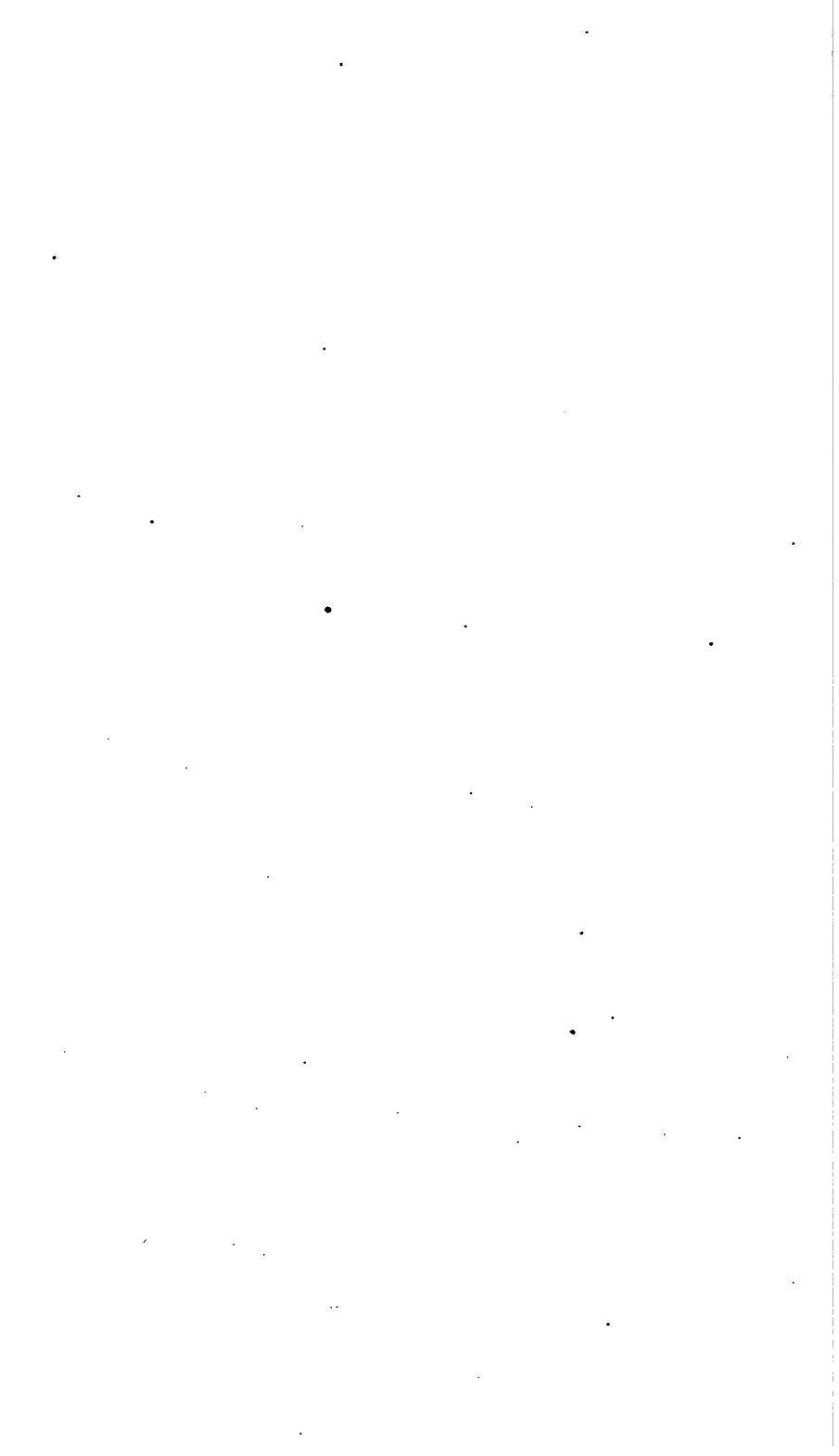
On motion of Judge X. B. Saunders, the Association adjourned to meet in Galveston on the second Tuesday, the twelfth day of December, A. D. 1883.

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SECRETARY'S OFFICE TEXAS BAR ASSOCIATION, }  
AUSTIN, TEXAS, August 1, A. D. 1882. }

I hereby certify that the foregoing is a true and correct copy of the proceedings of the Texas Bar Association at its organization session, held in the city of Galveston on the fifteenth and seventeenth days of July, A. D. 1882.

*Chas. S. Moore*  
Secretary.



# OFFICERS AND COMMITTEES.

1882.

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THOMAS J. DEVINE, <i>President</i> .....	San Antonio
B. H. BASSETT, <i>Vice-President</i> .....	Brenham
CHAS. S. MORSE, <i>Secretary</i> .....	Austin
M. F. MOTT, <i>Treasurer</i> .....	Galveston

## DIRECTORS.

W. P. BALLINGER.....	Galveston
GEORGE McCORMICK .....	Columbus
L. C. GROTHAUS.....	San Antonio
X. B. SAUNDERS.....	Belton
E. J. SIMKINS.....	Corsicana

## DELEGATES TO NATIONAL CONVENTION.

JOHN SAYLES .....	Brenham
RICHARD MORGAN, JR.....	Dallas
JACOB WAELDER.....	San Antonio

## ALTERNATES.

A. W. TERRELL.....	Austin
W. L. CRAWFORD.....	Dallas
WILLIAM STEADMAN.....	Marshall

### *Committee on Jurisprudence and Law Reform.*

Philip C. Tucker, Galveston.  
John Sayles, Brenham.  
J. P. Smith, Fort Worth.  
William Croft, Corsicana.  
George Clark, Waco.

### *Committee on Judicial Administration and Remedial Procedure.*

A. W. Terrell, Austin.  
John R. Kennard, Anderson.  
J. D. Sayers, Bastrop.  
Silas Hare, Sherman.  
Jo. Abbott, Hillsboro.

SEC. 2. A committee of three, of whom the Secretary shall always be one, shall be appointed by the President at each annual meeting of the Association, whose duty it shall be to report to the next meeting the names of all members who shall in the interval have died, with such notices of them as shall, in the discretion of the committee, be proper.

#### ARTICLE V.—GENERAL POWERS.

SECTION 1. This Association shall have power to impose fines, assess fees, and establish by-laws for its government. It shall have power to remove officers, and suspend or expel members for good cause, upon written charges exhibited against him by a member, and due notice given him of the charges, and of the time they will be brought before the Association.

SEC. 2. The By-Laws shall prescribe the assessments to be levied on the members for the support of the Association and the promotion of its objects.

#### ARTICLE VI.—QUORUM.

SECTION 1. Fifty members in regular standing shall constitute a quorum for the transaction of business.

#### ARTICLE VII.—ANNUAL ADDRESS.

SECTION 1. The President shall open each meeting of the Association with an address, in which he shall communicate the noteworthy changes in statutory and constitutional law, and especially such changes as affect the development and progress of the law and the administration of justice.

#### ARTICLE VIII.—MEETINGS.

SECTION 1. A majority of the members present at an annual meeting of this Association shall designate the time and place for holding the next annual meeting.

#### ARTICLE IX.—AMENDMENTS.

SECTION 1. All propositions to alter, amend or add to this Constitution shall be made in writing at a meeting of the Association, and filed with the Secretary at least one month before being acted upon, and shall not be adopted without the concurrence of two-thirds of all the members present.

## ARTICLE X.—DUES.

SECTION 1. Each member of the Association shall pay to the secretary the sum of \$2.50 as annual dues.

On motion, the Committee on Constitution was appointed a committee to report By-Laws and Rules for the Association.

Hon. W. S. Simkins, of Corsicana, offered the following resolution, which was, on motion, referred to the Committee on By-Laws:

*Resolved*, That neither the availability of men for political preferment, nor the advisability of measures which enter into the current politics of the day, shall ever be introduced or discussed in the proceedings of the State Bar Association of Texas.

It was moved and carried that the Association proceed to the election of officers, to hold until the next meeting of this Association.

The following officers were elected:

Hon. Thos. J. Devine, of San Antonio, President.

Hon. B. H. Bassett, of Brenham, Vice-President.

Chas. S. Morse, Esq., of Austin, Secretary.

Hon. M. F. Mott, of Galveston, Treasurer.

Hons. W. P. Ballinger, of Galveston; Geo. McCormick, of Columbus; L. C. Grothaus, of San Antonio; X. B. Saunders, of Belton, and E. J. Simkins, of Corsicana, Directors.

On motion, the Association adjourned until Monday morning at nine o'clock.

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SECOND DAY.

MONDAY MORNING, July 17, 1882.

The Association was called to order by the President, Hon. Thos. J. Devine, at nine o'clock a. m.

Hon. B. H. Bassett, Vice-President, was introduced and conducted to his seat on the stand.

The Secretary read the proceedings of Saturday's session, which were adopted.

Reports of committees being called for, General T. N. Waul, chairman of the Committee on By-Laws, made the following report:

*To the Hon. Thos. J. Devine, President Texas Bar Association:*

We beg leave to report herewith a code of By-Laws for the government of this Association:



## BY-LAWS.

## ARTICLE I.—PRESIDING OFFICERS.

SECTION 1. The President, and in his absence the Vice-President, shall preside at all meetings of the Association; if neither of these officers be present, a president pro tem. shall be chosen by and from the attending members.

## ARTICLE II.—ADDRESSES AND ESSAYS.

SECTION 1. The Board of Directors, at its first meeting after each annual meeting, shall select some person to make an address at the next annual meeting, and not exceeding six persons to read papers.

## ARTICLE III.—ANNUAL MEETINGS AND ORDER OF BUSINESS.

SECTION 1. The order of exercises at the annual meetings shall be as follows:

1. Opening address of the President.
2. The nomination and election of members.
3. Report of the Board of Directors.
4. Election of the Board of Directors.
5. Reports of the Secretary and Treasurer.
6. Reports of standing committees, as follows: On Jurisprudence and Law Reform; on Judicial Administration and Remedial Procedure; on Legal Education and Admission to the Bar; on Commercial Law; on Publications; on Grievances and Discipline.
7. Reports of special committees.
8. The nomination of officers.
9. Miscellaneous business.
10. The election of officers.
11. The annual address, to be delivered by the person selected by the Board of Directors, shall be made at the morning session of the second day of the annual meeting.

SEC. 2. This order of business may be changed at any meeting by a vote of a majority of the members present; and, except as otherwise provided by the Constitution or By-Laws, the usual parliamentary rules and orders will govern the proceedings.

SEC. 3. No person shall speak more than ten minutes at a time, nor more than twice on the same subject.

SEC. 4. A stenographer shall be employed at each annual meeting.

SEC. 5. Each county bar association may annually appoint delegates, not exceeding three in number, to the next meeting of the Association, and such delegates shall be entitled to all the privileges of membership at and during said meeting.

SEC. 6. All papers read before the Association shall be lodged with the Secretary. The annual address of the President, the reports of the committees and proceedings at the annual meetings shall be printed, but no other address made or paper read or presented shall be printed except by order of the Committee on Publication.

#### ARTICLE IV.—MEMBERSHIP AND DUES.

SECTION 1. The initiation fee to entitle a person to membership shall be \$5, which shall include the annual dues for the first year.

SEC. 2. The annual dues shall be payable at the annual meeting in advance, and should any member neglect to pay them for any year, at or before the next annual meeting, he shall cease to be a member. The Secretary shall give notice of this By-Law, within sixty days after each meeting, to all members in default.

#### ARTICLE V.—OFFICERS AND COMMITTEES.

SECTION 1. The terms of office of all officers elected at the annual meeting shall commence at the adjournment thereof, except the Board of Directors, whose term of office shall commence immediately upon their election.

SEC. 2. The President shall appoint all committees, except the Committee on Publication, within thirty days after the annual meeting, and shall announce them to the Secretary, who shall promptly give notice to the persons appointed. The Committee on Publication shall be appointed on the first day of each meeting.

SEC. 3. The Secretary's and Treasurer's reports shall be examined and audited by the Board of Directors before their presentation to the Association.

SEC. 4. The Board of Directors and all standing committees shall meet on the day preceeding each annual meeting, at the place where the same is to be held, at such hour as their respective chairmen shall appoint; and should any member of any committee be absent, the vacancy may be filled by the members of the committee present.

SEC. 5. The Committee on Publication shall meet within one month after each annual meeting, at such time and place as the chairman shall appoint.

SEC. 6. Special meetings of any committee shall be held at such times and places as the chairman thereof may appoint; reasonable notice shall be given by him to each member by mail.

#### ARTICLE VI.—DUTIES OF COMMITTEES.

SECTION 1. It shall be the duty of the Committee on Jurisprudence and Law Reform to consider and report to the Association such amendments of the law as in its opinion should be adopted; also, to scrutinize proposed changes in the law, and, when necessary, report upon the same.

SEC. 2. It shall be the duty of the Committee on Judicial Administration and Remedial Procedure to observe the practical workings of the judicial system of the State, and recommend, by written or printed report, from time to time, any changes therein which observation or experience may suggest.

SEC. 3. It shall be the duty of the Committee on Legal Education and Admission to the Bar to report the most suitable means for promoting and facilitating the study of the law, and the necessity or propriety of elevating the standard of qualifications for admission to the bar, and the best means for accomplishing that object.

SEC. 4. It shall be the duty of the Committee on Commercial Law to report the best means to produce uniformity in commercial law and usages.

SEC. 5. The Committee on Publication shall pass upon and have printed all papers, should they deem them of sufficient importance, except as it is otherwise provided by the Constitution and By-Laws.

SEC. 6. The Committee on Grievances and Discipline shall report as to the best means of upholding the honor and dignity of the law in the professional intercourse among the members of this Association. All complaints against any member of this Association shall be presented to this committee, and if the committee shall be of the opinion that the matters alleged are of sufficient importance, they will determine upon the course of procedure for the trial of the same, and shall give notice to the party charged of the nature of the complaint and the time of the trial thereof by the Association, all of which the complainant shall also be notified of by the committee.

## ARTICLE VII.—AMENDMENTS.

SECTION 1. These By-Laws may be amended at any meeting of the Association, by a vote of two-thirds of those present, provided that a copy of the proposed amendment shall have been filed with the Secretary on or before the first day of such annual meeting.

Your committee would further report that they have had referred to them the following resolution offered by W. S. Simkins, Esq., of Corsicana, viz:

*Resolved*, That neither the availability of men for political preferment, nor the advisability of measures which enter into the current politics of the day, shall ever be introduced or discussed in the proceedings of the State Bar Association of Texas.

And after having carefully considered the same, would most respectfully report it back with the recommendation that it be not adopted, for the reason that the objects sought to be attained by said resolution are already provided for and excluded by the preamble to the Constitution.

Respectfully submitted,

T. N. WAUL, *Chairman*,  
W. S. ROBSON,  
X. B. SAUNDERS,  
C. C. GARRETT,  
N. O. GREEN.

Committee.

On motion of T. T. Gammage, Esq., of Palestine, the report was unanimously adopted and the committee discharged.

Hon. T. N. Waul, of Galveston, offered the following resolution, which was adopted:

*Resolved*, That the President appoint three delegates to represent this Association at the fifth annual meeting of the National Bar Association, to be held at Saratoga Springs, New York, on August 8, 9, 10 and 11, A. D. 1882.

The following resolution, by W. S. Robson, Esq., of LaGrange, was adopted:

*Resolved*, 1. That the Secretary of this Association be and he is hereby authorized to have lithographed certificates of membership, and that he issue the same to all members of the organization session, and also certificates of like character for members to be admitted hereafter.

2. That the Secretary have all necessary blanks printed, and purchase such books and stationery as may be necessary for the proper discharge of his duties.

W. S. Robson, Esq., also offered the following, which was adopted:

*Resolved*, That the President, Secretary, and Board of Directors are hereby auth-

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These Proceedings are published by authority and distributed to members by the Association.

CHARLES S. MORSE, *Secretary*.

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The Fourth Annual Session of the Association will be held in the City of Austin, the First Tuesday in May, 1885.

A Called Session will be held in the City of Austin, on Tuesday, the 20th day of January, 1885.

# TEXAS BAR ASSOCIATION.

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## CONSTITUTION.

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### ARTICLE I.—NAME AND OBJECTS OF THE ASSOCIATION.

SECTION 1. This Association shall be called the TEXAS BAR ASSOCIATION.

SEC. 2. Its objects shall be to advance the science of jurisprudence, promote the uniformity of legislation in the administration of justice throughout the State, uphold the honor of the profession of the law, and encourage cordial intercourse among its members.

### ARTICLE II.—MEMBERSHIP.

SECTION 1. Any attorney of the Texas bar, in honorable standing, upon his written application, may be admitted to membership at any regular meeting of the Association.

SEC. 2. Such application shall be referred to the Board of Directors, who shall report the same to the Association; and if said report be favorable, a ballot shall be taken, and if four-fifths of the members voting shall be in favor of the applicant, he shall be declared elected; and if he shall sign the Constitution and pay his admission fee within ten days after he shall be notified of his election, he shall be placed on the roll of members.

### ARTICLE III.—OFFICERS AND THEIR DUTIES.

SECTION 1. The officers of the Association shall be a President, a Vice-President, a Secretary, and a Treasurer, who shall be chosen by ballot at a regular meeting, by a majority of the members present and voting.

SEC. 2. There shall be a Board of Directors, five in number, elected at the same time and in the same manner with the officers; and the President and Vice-President shall be ex-officio members of the Board.

SEC. 3. The officers and Directors shall hold their places for one year, and until their successors shall be elected; provided, that the same person shall not be elected President two years in succession.

SEC. 4. The duties of officers shall be such as usually devolve upon such positions, and may be regulated and prescribed from time to time by the Constitution, By-Laws or resolutions of the Association.

SEC. 5. The Board of Directors shall have exclusive authority, and shall exercise executive supervision over the affairs of the Association between its meetings.

SEC. 6. Vacancies in the offices and Board of Directors shall be filled by the Board, the concurrence of a majority of whom shall be necessary to a choice.

#### ARTICLE IV.—COMMITTEES.

SECTION 1. The following committees shall be appointed annually by the President for the year ensuing, and shall consist of five members each: On Jurisprudence and Law Reform, on Judicial Administration and Remedial Procedure, on Legal Education and Admission to the Bar, on Commercial Law, on Publication, on Grievances and Discipline.

SEC. 2. A committee of three, of whom the Secretary shall always be one, shall be appointed by the President at each annual meeting of the Association, whose duty it shall be to report to the next meeting the names of all members who shall in the interval have died, with such notices of them as shall, in the discretion of the committee, be proper.

#### ARTICLE V.—GENERAL POWERS.

SECTION 1. This Association shall have power to impose fines, assess fees, and establish by-laws for its government. It shall have power to remove officers, and suspend or expel members for good cause, upon written charges exhibited against him by a member, and due notice given him of the charges, and of the time they will be brought before the Association.

SEC. 2. The By-Laws shall prescribe the assessments to be levied on the members for the support of the Association and the promotion of its objects.

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ARTICLE VI.—QUORUM.

SECTION 1. Twenty-five members in regular standing shall constitute a quorum for the transaction of business.

## ARTICLE VII.—ANNUAL ADDRESS.

SECTION 1. The President shall open each meeting of the Association with an address, in which he shall communicate the noteworthy changes in statutory and constitutional law, and especially such changes as affect the development and progress of the law and the administration of justice.

## ARTICLE VIII.—MEETINGS.

SECTION 1. A majority of the members present at an annual meeting of this Association shall designate the time and place for holding the next annual meeting.

## ARTICLE IX.—AMENDMENTS.

SECTION 1. All propositions to alter, amend or add to this Constitution shall be made in writing at a meeting of the Association, and filed with the Secretary at least one month before being acted upon, and shall not be adopted without the concurrence of two-thirds of all the members present.

## ARTICLE X.—DUES.

SECTION 1. Each member of the Association shall pay to the Secretary the sum of \$2 50 as annual dues.

## BY-LAWS.

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## ARTICLE I.—PRESIDING OFFICERS.

SECTION 1. The President, and in his absence the Vice-President, shall preside at all meetings of the Association; if neither of these officers be present, a President pro tem. shall be chosen by and from the attending members.

## ARTICLE II.—ADDRESSES AND ESSAYS.

SECTION. 1. The Board of Directors, at its first meeting after each annual meeting, shall select some person to make an address at the next annual meeting, and not exceeding six persons to read papers,



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**ARTICLE III.—ANNUAL MEETINGS AND ORDER OF BUSINESS.**

**SECTION 1.** The order of exercises at the annual meetings shall be as follows:

1. Opening address of the President.
2. The nomination and election of members.
3. Report of the Board of Directors.
4. Election of the Board of Directors.
5. Reports of the Secretary and Treasurer.
6. Reports of Standing Committees, as follows: On Jurisprudence and Law Reform; on Judicial Administration and Remedial Procedure; on Legal Education and Admission to the Bar; on Commercial Law; on Publications; on Grievances and Discipline.
7. Reports of special committees.
8. The nomination of officers.
9. Miscellaneous business.
10. The election of officers.
11. The annual address, to be delivered by the person selected by the Board of Directors, shall be made at the morning session of the second day of the annual meeting.

**SEC. 2.** This order of business may be changed at any meeting by a vote of a majority of the members present; and, except as otherwise provided by the Constitution or By-Laws, the usual parliamentary rules and orders will govern the proceedings.

**SEC. 3.** No person shall speak more than ten minutes at a time, nor more than twice on the same subject.

**SEC. 4.** A stenographer shall be employed at each annual meeting.

**SEC. 5.** Each county bar association may annually appoint delegates, not exceeding three in number, to the next meeting of the Association, and such delegates shall be entitled to all the privileges of membership at and during said meeting.

**SEC. 6.** All papers read before the Association shall be lodged with the Secretary. The annual address of the President, the reports of the committees and proceedings of the annual meetings shall be printed, but no other address made or paper read or presented shall be printed except by order of the Committee on Publication.

**ARTICLE IV.—MEMBERSHIP AND DUES.**

**SECTION 1.** The initiation fee to entitle a person to membership shall be \$5, which shall include the annual dues for the first year.

**SEC. 2.** The annual dues shall be payable at the annual meeting in advance, and should any member neglect to pay them for any year, at or before the next annual meeting, he shall cease to be a member.

The Secretary shall give notice of this By-Law, within sixty days after each meeting, to all members in default.

#### ARTICLE V.—OFFICERS AND COMMITTEES.

SECTION 1. The terms of office of all officers elected at the annual meeting shall commence at the adjournment thereof, except the Board of Directors, whose term of office shall commence immediately upon their election.

SEC. 2. The President shall appoint all committees, except the Committee on Publication, within thirty days after the annual meeting, and shall announce them to the Secretary, who shall promptly give notice to the person appointed. The Committee on Publication shall be appointed on the first day of each meeting.

SEC. 3. The Secretary's and Treasurer's reports shall be examined and audited by the Board of Directors before their presentation to the Association.

SEC. 4. The Board of Directors and all standing committees shall meet on the day preceding each annual meeting, at the place where the same is to be held, at such hour as their respective chairmen shall appoint, and should any member of any committee be absent, the vacancy may be filled by the members of the committee present.

SEC. 5. The Committee on Publication shall meet within one month after each annual meeting, at such time and place as the chairman shall appoint.

SEC. 6. Special meetings of any committee shall be held at such times and places as the chairman thereof may appoint; reasonable notice shall be given by him to each member by mail.

#### ARTICLE VI.—DUTIES OF COMMITTEES.

SECTION 1. It shall be the duty of the Committee on Jurisprudence and Law Reform to consider and report to the Association such amendments to the law as in its opinion should be adopted; also to scrutinize proposed changes in the law, and, when necessary, report upon the same.

SEC. 2. It shall be the duty of the Committee on Judicial Administration and Remedial Procedure to observe the practical workings of the judicial system of the State, and recommend by written or printed report, from time to time, any changes therein which observation or experience may suggest.

SEC. 3. It shall be the duty of the Committee on Legal Education and Admission to the Bar to report the most suitable means for promoting and facilitating the study of the law, and the necessity or

propriety of elevating the standard of qualifications for admission to the bar, and the best means for accomplishing that object.

SEC. 4. It shall be the duty of the Committee on Commercial Law to report the best means to produce uniformity in commercial law and usages.

SEC. 5. The Committee on Publication shall pass upon and have printed all papers, should they deem them of sufficient importance, except as it is otherwise provided by the Constitution and By-Laws.

SEC. 6. The Committee on Grievances and Discipline shall report as to the best means of upholding the honor and dignity of the law in the professional intercourse among the members of this Association. All complaints against the members of this Association shall be presented to this committee, and if the committee shall be of the opinion that the matters alleged are of sufficient importance, they will determine upon the course of procedure for the trial of the same; and shall give notice to the party charged of the nature of the complaint and the time of the trial thereof by the Association, all of which the complainant shall also be notified of by the committee.

#### ARTICLE VII.—AMENDMENTS.

SECTION 1. These By-Laws may be amended at any meeting of the Association, by a vote of two-thirds of those present, provided that a copy of the proposed amendment shall have been filed with the Secretary on or before the first day of such annual meeting.

PROCEEDINGS  
OF THE  
THIRD ANNUAL SESSION  
OF THE  
TEXAS BAR ASSOCIATION  
HELD IN THE  
CITY OF SAN ANTONIO, NOVEMBER 25, 1884.

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*FIRST DAY*—MORNING SESSION.

SAN ANTONIO, TEXAS, NOV. 25, 1884.

The Association was called to order by the President, with the following officers and members of the Standing Committees present:

J. H. McLEARY, President.

CHAS. S. MORSE, Secretary.

Hon. B. H. BASSETT and ISAAC P. SIMPSON, of the Committee on Judicial Administration and Remedial Procedure.

Hon. O. M. ROBERTS, Chairman of the Committee on Legal Education and Admission to the Bar.

Hon. A. J. PEELER, Chairman of the Committee on Commercial Law.

Hon. L. C. GROTHAUS, Chairman of the Committee on Grievances and Discipline.

Hon. A. W. TERRELL, Delegate to National Convention and Chairman of the Committee on Publication.

The Secretary announced a quorum present, and the President declared the Association open and ready for the transaction of business.

On motion of Hon. A. W. HOUSTON, the reading of the minutes of the last annual meeting was dispensed with.

The President then delivered his annual address. [See appendix.]

The President then appointed the following Committee on Publication:

R. L. FOARD, of Columbus; A. M. JACKSON, jr., of Austin; C. C. GARRETT, of Brenham; W. S. ROBSON, of LaGrange, and F. CHARLES HUME, of Galveston.

The Association then went into the election of a Board of Directors for the next year, resulting in the selection of the following:

B. H. BASSETT, of Brenham; W. H. BURGESS, of Seguin; A. J. PEELER, of Austin; J. E. McCOMB, of Montgomery; JACOB WAELDER, of San Antonio.

The Board of Directors reported favorably upon the following applications, and the applicants were duly balloted for and elected:

H. P. DROUGHT, San Antonio; JOHN H. COPELAND, San Antonio; OSCAR BERGSTROM, San Antonio; H. L. GOSLING, Castroville; C. UPSON, San Antonio; J. E. OSCHER, San Antonio; L. N. WALTHALL, San Antonio; THOS. H. FRANKLIN, San Marcos; WILLIAM AUBREY, San Antonio; JOHN M. MOORE, Albany; HENRY E. VERNOR, San Antonio.

The Secretary then read his annual report:

*To the President and Members of the Texas Bar Association:*

GENTLEMEN—I herewith submit my annual report as Secretary of the Texas Bar Association:

---

I have received as annual dues from 187 members at \$2 50...\$ 467 50  
 Initiation fees from twenty-six members at last meeting at \$2 50 65 00

Making a total of..... \$ 532 50  
 I have expended for printing Proceedings of last meeting and  
 for expenses of printing notices to members, postage, etc.,  
 as per proper vouchers approved by Committee on Publica-  
 tion, including Secretary's salary..... 508 68

Leaving a balance in my hands of.....\$ 23 82  
 At our last meeting my report showed that I had on hand the  
 sum of..... 53 00

And our Treasurer not being present, I retained it, and now  
 have the sum of.....\$ 76 82

There are on our roll of members 328 names subject to annual dues.  
 Of this number, only 187 have paid and are now in good standing,  
 leaving 141 members who have not paid. I have notified these delin-  
 quents and written them personally, time and again, but they have  
 failed to respond.

Nearly sixty members of the Association have paid their annual dues  
 within the past sixty days, while the By-Laws require the payment in  
 advance, of all such dues, and impose as penalty for non-payment, the  
 cancelling of membership, after sixty days notice to members in  
 default.

The payments made during the past month, have enabled me to  
 pay the current expenses of this office, without having to draw any  
 drafts on the Treasurer, who has still on hand the sum of \$361 35, as  
 per his last annual report. This, in addition to the \$76 82 in my hands,  
 shows a total amount to the credit of the Association of \$438 17.

I have forwarded a copy of our Proceedings to the President and  
 Secretary of each State Bar Association in the United States, and have  
 also sent a copy to the Chief Justice of each Supreme Court, for which  
 I have received many complimentary acknowledgments.

From the Printed Proceedings received from various State Bar As-  
 sociations, I find that the Texas Bar Association, now holding its Third  
 Annual Session, has on its roll nearly as many members as that of any  
 similar organization in the Union.

Trusting that the pride of the legal profession of Texas may still  
 further encourage the growth which is so promising, I have the honor  
 to be,

Very respectfully, yours,

CHAS. S. MORSE,  
 Secretary.

The report, on motion, was referred to the Board of Di-  
 rectors.

The Treasurer presented his annual report, which was referred to the Board of Directors:

*To the President and Members of the Texas Bar Association:*

Your Treasurer respectfully reports that he has received and expended nothing since last report.

That the balance of \$361 35, which was on hand when he made his report to the Annual Session held in the city of Houston on the 14th of December, 1883, remains in his hands subject to the order of the Association.

Respectfully,

M. F. MOTT, Treasurer.

On motion of L. C. GROTHAUS, the Association adjourned until 10 o'clock to-morrow morning.

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## SECOND DAY—MORNING SESSION.

WEDNESDAY, NOV. 26, 1884.

The meeting was called to order at 10 o'clock by the President.

The minutes of the first day's proceedings were read and approved.

On ballot, the following new members were received into the Association:

G. B. WILLETT, Austin.

S. G. NEWTON, J. S. CARR, W. W. WALLING and C. H. MAYFIELD, San Antonio.

ROBERT L. BALL, Colorado City.

ROBERT G. WEST, Austin.

N. G. KITTRELL, Centreville.

T. L. JOHNSON, Seguin.

Hon. B. H. BASSETT, of Brenham, who had been selected by the Board of Directors to deliver the Annual Address,

was then introduced and read his address, which was referred to the Committee on Publication. [See Appendix.]

Judge WAELDERSaid it was his pleasant duty to inform the Association that the San Antonio Bar Association would give a banquet at the Casino this evening at 8:30 o'clock, to which all the members of the Texas Bar Association were cordially invited.

The President of the Association, on behalf of the members, accepted the invitation with thanks, and stated there was nothing in the Constitution of the Association or the constitution of any of the members to prevent the acceptance of the invitation.

On behalf of the Committee on Legal Education and Admission to the Bar, Ex-Governor O. M. ROBERTS, President of the State Law University, read the report of that committee. (See appendix.)

The report was adopted and referred to the Committee on Publication.

Hon. A. J. PEELER, of Austin, Chairman of the Committee on Commercial Law, read an elaborate report, the full scope and extent of which will be found in the appendix.

The report was adopted.

On behalf of the Committee on Publication, Hon. A. W. TERRELL read the following report:

*To the President and Members of the Texas Bar Association:*

Your Committee on Publication appointed at the last annual meeting of the Association caused to be published in a pamphlet of eighty-five pages the Proceedings of the last two meetings, including the Constitution and By-Laws of the Association, with the annual address of the Hon. Richard S. Walker, and two papers read by members of the Association, one of which was by the Hon. A. J. Peeler, on "the right of land owners in Texas to protection against governmental and individual aggression in the use and enjoyment of their property." The other was on Texas Pleading, by the Hon. Robert G. Street, of Galveston. These papers, as well as the address of the Hon. T. N. WAUL, the former President, were listened to with interest at the last annual meeting and received such general approval as to induce their publication in full.



The work of supervising the publication of the Proceedings of the last meeting was performed by the Secretary of the Association, whose report of the expenses thereof is already in the hands of the Board of Directors.

A. W. TERRELL, Chairman.

The following amendment to the Constitution, in reference to the election of officers, was presented by Hon. D. P. MARR, of Pleasanton, and, under the rules, was laid over until next annual meeting:

The following amendment is proposed to Sections 1 and 3, of Art. III, of the Constitution of the Texas Bar Association, to-wit:

That Section 1 shall hereafter read as follows:

SECTION 1. The officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, who shall be chosen by ballot, at the annual meeting, by a majority of the members present and voting; *provided*, that if only one candidate shall be before the Association to be voted for, for any one office, the rules may be suspended and the election of such officer be made by a *viva voce* vote.

That Section 3 shall hereafter read as follows:

SEC. 3. The officers and Directors shall hold their places for one year, or until their successors shall be elected; *provided*, that no person shall be elected President twice in succession.

The following resolution was introduced by Hon. A. J. PEELER, of Austin:

*Resolved*, That the Secretary of this Association be instructed to mail to the professors and to each of the students of the Law Department of the University of Texas, a copy of the Printed Proceedings of each annual meeting of the Association.

The resolution was adopted.

Hon. O. M. ROBERTS moved that the next annual meeting of the Association be held in Austin, on the fourth Tuesday of January, 1885.

Hon. A. W. HOUSTON moved to amend by simply stating that the next annual meeting be held at Austin.

Carried.

Hon. D. P. MARR moved that the time fixed for holding that meeting be the first Tuesday in May, and that the

President call a special meeting, to be held in Austin, in January next, and that a special committee of three be appointed to consider and report on this motion.

The Chair appointed D. P. MARR, J. A. GREEN, and W. H. LEDBETTER.

Colonel J. A. GREEN moved a postponement of action on the question, but his motion was withdrawn.

Hon. L. N. WALTHALL offered the following resolutions:

1. *Resolved*, That this Association views with alarm the growing tendency in the public mind to undervalue the reverence that is due to the persons of the judges of the courts, submission to the courts and acquiescence in judicial determination.

2. *Resolved*, That it is the bounden duty of lawyers to meet and counteract this great evil.

3. *Resolved*, That the President of this Association select from the members of the Association one who has long resided within the State, and well known to the people of the State, and to the profession, to deliver, at the next annual meeting, an address on this subject, to set forth this great evil and to suggest a remedy therefor.

In advocacy Mr. WALTHALL alluded to the Cincinnati riots.

The resolution was opposed by Hon. T. S. MAXEY, of Austin, who stated that there was no foundation for the resolution and denied that any such state of affairs exists. He said that every judicial official in the State, from the Supreme Judges down to the Justices of the Peace, felt perfectly safe. The only indignation which had been created and manifested was on account of the sharp practice of some lawyers, who, by trickery, had defeated justice, and was not the result of the conduct of any judicial officials.

The resolution, on motion of Hon. A. W. TERRELL, was referred to a special committee of three, consisting of A. W. HOUSTON, W. H. BURGESS and WM. AUBREY.

The Special Committee to whom was referred the motion of Hon. D. P. MARR, made the following report:

*To the President and Members of the Texas Bar Association:*

Your Special Committee of Three, to whom was referred the question of fixing the time of the next annual meeting of the Association and the propriety of a called meeting of the Association in January next, have considered the same and direct me to make the following report, and ask its adoption:

1st. That the next annual meeting of the Texas Bar Association shall be held, as already determined, in the city of Austin; and your committee suggests as a suitable time for said meeting the first Tuesday in May, A. D. 1885.

2nd. That the President of the Association is hereby authorized and requested to call a meeting of the Association, to be begun and holden at the city of Austin, on the third Tuesday of January, A. D. 1885, to consider the propriety of recommending to the Legislature amendments to the Judiciary Article of the State Constitution, and such other business as may properly come before said called meeting.

D. P. MARR, for the Committee.

On motion, the report was adopted.

An election of officers for the ensuing year was then had, which resulted in the election of the following:

Hon. B. H. BASSETT, of Brenham, President.

Hon. A. J. PEELER, of Austin, Vice President.

CHARLES S. MORSE, of Austin, Secretary.

ROBERT G. WEST, of Austin, Treasurer.

The committee to whom Colonel WALTHALL's resolution was referred, reported as follows:

*To the President and Members of the Texas Bar Association:*

Your Special Committee, to whom was referred the resolution of Mr. L. N. Walthall, which we herewith return, have considered the same, and respectfully recommend the adoption of the accompanying substitute, and the passage of the substitute.

Respectfully submitted,

A. W. HOUSTON,  
W. H. BURGESS,  
WM. AUBREY,  
Committee.

## SUBSTITUTE.

*Resolved*, That the President select from the members of this Association one, who shall, at our next annual meeting, deliver an address on the relations of the people to the bench, and the respect due to judicial decisions.

The report and substitute were both adopted.

The President then appointed L. N. WALTHALL to deliver an address on "The Relations of the People to the Bench," at the next regular session of the Association.

The Secretary read resolutions passed by the Bar Association of Fayette county, on the death of Colonel B. TIMMONS, a member of the Association, which was referred to the Committee on Memorials:

1. *Resolved*, That we deeply deplore the loss of our Brother, Colonel B. Timmons, and, in his death, recognize the fact that we have lost a leader and a friend, whose absence from our midst will be long felt and deeply deplored.

2. *Resolved*, That as a soldier he was ever ready to do battle for his country; as a civilian he ever acknowledged the supremacy of the law, and bowed willingly to the mandates of our courts; and as an attorney ever zealous in seeing that the rights of his clients were protected, and their cases fairly, honestly and fully presented to the courts.

3. *Resolved*, That we tender to the bereaved and sorrowing wife, relatives and friends of the deceased our heartfelt sympathy in this hour of their sorrow and bereavement, and the Secretary of this Association be instructed to forward a copy of these resolutions to the Secretary of the State Bar Association of Texas.

J. C. BROWN,  
W. H. LEDBETTER,  
R. H. PHELPS,  
B. F. DUNN,  
J. T. DUNCAN.

The Committee on Grievances and Discipline made the following report, which was adopted:

*To the President and Members of the Texas Bar Association:*

Your Committee on Grievances and Discipline regret that for want of time, since its re-organization, they cannot present an exhaustive report as to the best means of upholding the honor and dignity of the

law, in professional intercourse between members of this Association; but we are pleased to be able to report that no complaints have been made to or become known to your committee, of any breach of professional ethics by any member of the Association; and further, that no complaint of any character has been made known to us touching the action of any of the members.

Respectfully submitted,

L. C. GROTHAUS,  
A. M. JACKSON, JR.,  
F. H. PENDERGAST,  
N. G. KITTRELL,  
T. S. MAXEY,  
Committee.

Hon. O. M. ROBERTS moved the appointment by the Chair of a committee of three, to prepare a draft of an amendment to the Judiciary Article of our State Constitution.

The motion was carried.

The Chair appointed Hon. O. M. ROBERTS, Hon. B. H. BASSETT and Col. JOHN A. GREEN.

On behalf of the Committee on Judicial Administration and Remedial Procedure, Hon. B. H. BASSETT reported as follows:

*To the President and Members of the Texas Bar Association:*

At the last meeting of the Association the President appointed a Committee on Judicial Administration and Remedial Procedure, consisting of five, but two of whom have reported present and able for duty at the meeting to-day.

Under the authority conferred by Article V, Section 4, of the Constitution, the committeemen who are present have selected three members of the Association to fill the vacancies caused by the absence of their associates, and the committee thus constituted beg leave to submit the following report:

Your Committee have not construed their duties to include the recommendation of reforms which require legislative action, but such only as may be accomplished through the instrumentality of the courts.

Under the Constitution of Texas, the authority of the Supreme Court to make rules and regulations for its own government, and that of the other Courts of the State to regulate proceedings therein, and

to expedite the dispatch of business, seems to confer upon that Court all the power requisite to form a complete system of pleading and practice.

The Court has already, to some extent, exercised the authority conferred, by the adoption of the existing rules for the government of the Supreme and District Courts. These rules, though susceptible of amendment in matters of detail under the suggestions of experience, constitute the basis for a most admirable system of practice and procedure, and by expansion, may be made to supply whatever is lacking in the laws and decisions relating to the subject.

Your committee believe that the Association will have inaugurated a very desirable work should it suggest to the Supreme Court the appointment of a competent committee to revise the rules, and to make such additions to them as may be necessary, and they respectfully recommend that the President of the Association be authorized and requested in its name to bring the matter to the attention of the Court at his earliest convenience.

Respectfully submitted,

B. H. BASSETT,  
I. P. SIMPSON,  
N. O. GREEN,  
W. H. LEDBETTER,  
D. P. MARR,

Committee.

The report of the committee was, on motion, adopted.

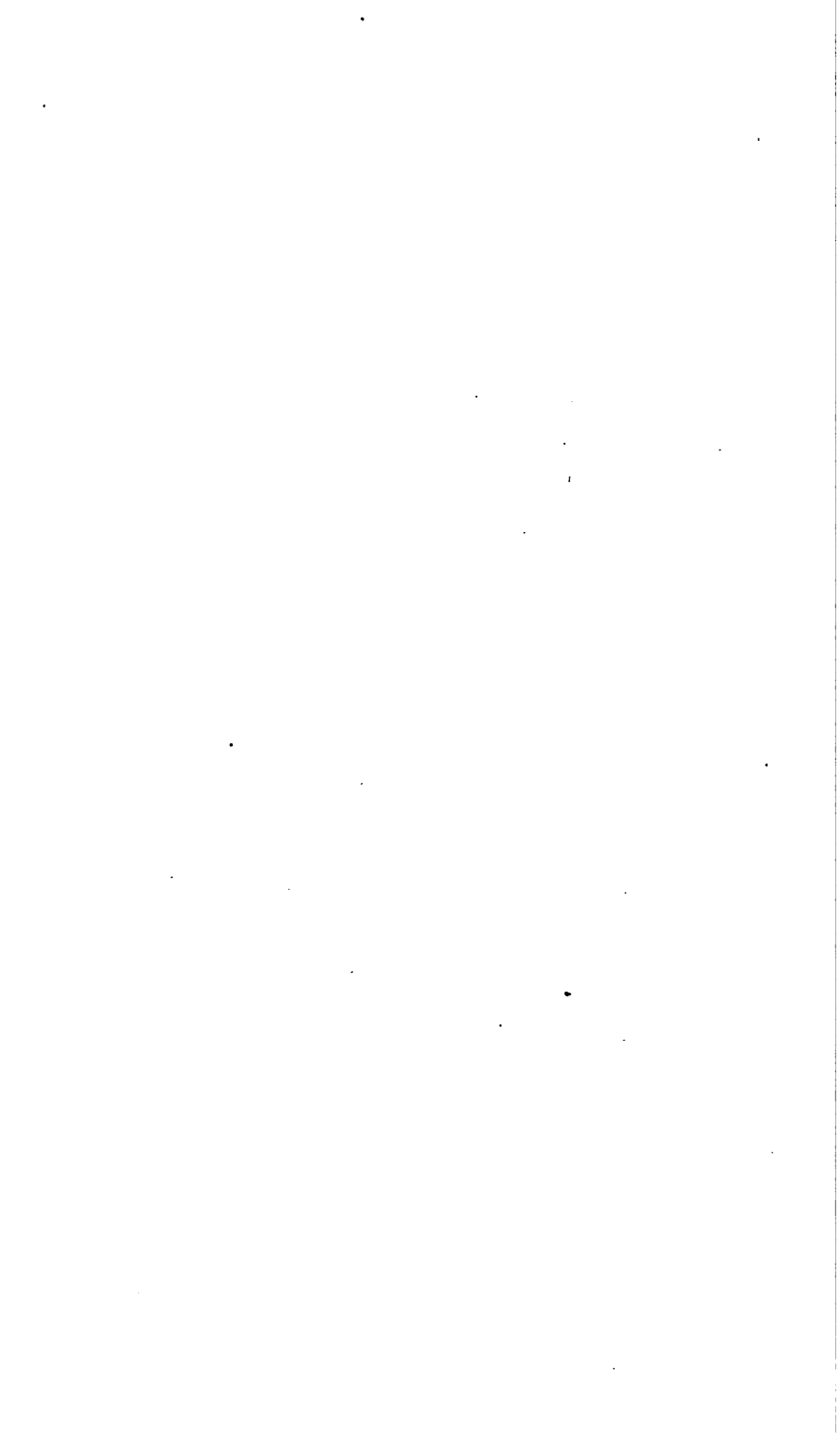
The Association, on motion of A. J. PEELER, tendered a vote of thanks to the retiring President.

The Association then adjourned, to meet in Austin, on the first Tuesday in May, A. D. 1885.

CHAS. S. MORSE,  
Secretary.

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NOTE.—A called meeting of the Association will be held in the City of Austin, on the Third Tuesday, the 20th day of January, A. D. 1885.



# OFFICERS AND COMMITTEES.

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B. H. BASSETT.....	<i>President</i> .....	Brenham.
A. J. PEELER.....	<i>Vice-President</i> .....	Austin.
CHAS. S. MORSE.....	<i>Secretary</i> .....	Austin.
ROBT. G. WEST.....	<i>Treasurer</i> .....	Austin.

## DIRECTORS.

B. H. Bassett.....	Brenham.
W. H. Burgess.....	Seguin.
A. J. Peeler.....	Austin.
J. E. McComb.....	Montgomery.
Jacob Waelder.....	San Antonio.

## *Committee on Jurisprudence and Law Reform.*

Jno. Y. Gooch.....	Palestine.
Chas. A. Culberson.....	Jefferson.
F. H. Prendergast.....	Franklin.
H. O. Head.....	Sherman.
J. P. Smith.....	Ft. Worth.

## *Committee on Judicial Administration and Remedial Procedure.*

J. T. Swearingen.....	Brenham.
N. A. Rector.....	Giddings.
W. H. Pope.....	Marshall.
T. S. Henderson.....	Cameron.
F. Charles Hume.....	Galveston.

## *Committee on Legal Education and Admission to the Bar.*

George Clark.....	Waco.
R. S. Gould, sr.....	Austin.
A. T. Watts.....	Weatherford.
N. W. Finley.....	Tyler.
T. S. Maxey.....	Austin.



*Committee on Commercial Law.*

W. B. Botts.....	Houston.
P. E. Pearson.....	Richmond.
O. S. Eaton.....	Galveston.
R. W. Stayton.....	Victoria.
Oscar Bergstrom.....	San Antonio.

*Committee on Grievances and Discipline.*

A. Chesley.....	Bellville.
W. S. Robson.....	LaGrange.
T. S. Reese.....	Hempstead.
Jo. Abbott.....	Hillsboro.
N. P. Garrett.....	Cameron.

*Committee of Three on Deceased Members.*

F. D. Wilkes.....	Lampasas.
Geo. Goldthwaite.....	Houston.
Chas. S. Morse, Secretary.....	Austin.

*Committee on Publication.*

R. L. Foard.....	Columbus.
A. M. Jackson, jr.....	Austin.
C. C. Garrett.....	Brenham.
W. S. Robson.....	LaGrange.
F. Chas. Hume.....	Galveston.

*Committee on Amendment to Judiciary Article of the Constitution,  
To Report at Called Meeting of Association Jan. 20, 1885.*

B. H. Bassett.....	Brenham.
O. M. Roberts.....	Austin.
J. A. Green.....	San Antonio.

# ROLL OF MEMBERS.

Abbott, Jo.....	Hillsboro	Copeland, Jno. H.....	San Antonio
Acker, Walter.....	Lampasas	Crain, W. H.....	Hallettsville
Adams, Z. T.....	Kaufman	Crark, W. H.....	Houston
Alexander, L. C.....	Waco	Crawford, W. L.....	Dallas
Allen, W. H.....	Terrell	Croft, William.....	Corsicana
Anderson, Jas. M.....	Waco	Croom, J. L., jr.....	Matagorda
Andrews, A. W.....	Terrell	Cuberson, Chas. A.....	Jefferson
Angel, H. P.....	Galveston		
Antony, E. L.....	Rockdale	Davidson, R. V.....	Galveston
Atkinson, W. M.....	Gonzales	Davidson, W. L.....	Richmond
Austin, William T.....	Galveston	Davis, George W.....	Galveston
Aubrey, Wm.....	San Antonio	DeBerry, A. W.....	Cleburne
Autry, James L.....	Corsicana	Delany, W. S.....	Columbus
		Deunis, Isaac N.....	Wharton
Ballinger, W. P.....	Galveston	Denson, W. B.....	Galveston
Baker, James A., sr.....	Houston	Devine, Thomas J.....	San Antonio
Baker, James A., jr.....	Houston	Dickinson, E. C.....	Rusk
Ball, R. L.....	Colorado	Douglass, W. L.....	Beaumont
Barry, B. T.....	Corsicana	Drought, H. P.....	San Antonio
Bassett, B. H.....	Brenham		
Battle, N. W.....	Waco	Eaton, O. S.....	Galveston
Beale, R. C.....	Corsicana	Edmonds, Elias.....	LaSalle
Bell, C. K.....	Hamilton	Edmundson, C.....	Austin
Bergstrom, O.....	San Antonio	Elgin, John E.....	Waco
Blair, T. A.....	Waco	Evans, Chas. I.....	Ablene
Blake, S. R.....	Bellville		
Blanding, J. M.....	Corsicana	Farrar, L. J.....	Groesbeeck
Botts, W. B.....	Houston	Field, A. H.....	Dallas
Bower, E. G.....	Dallas	Finlay, Geo. P.....	Galveston
Bradley, L. D.....	Fairfield	Finlay, O. E.....	Graham
Bright, W. R.....	Corsicana	Finley, N. W.....	Tyler
Brighurst, W. L.....	Marshall	Finley, Howard.....	Galveston
Brown, T. J.....	Sherman	Fisher, A. S.....	Georgetown
Brown, J. W.....	Cleburne	Fisher, Sam R.....	Austin
Bustell, A. B.....	Galveston	Flournoy, W. M.....	Waco
Burgess, W. H.....	Seguin	Fly, W. S.....	Gonzales
Burtis, James H.....	Austin	Foard, R. L.....	Columbus
		Fontaine, Sydney T.....	Galveston
Callaghan, Bryan.....	San Antonio	Ford, T. W.....	Jasper
Call, E. O.....	Hillsboro	Franklin, Joseph.....	Galveston
Campbell, A. R.....	Galveston	Franklin, R. M.....	Galveston
Carlington, W. A.....	Houston	Franklin, Thos. H.....	San Marcos
Carroll, J. A.....	Denton	Freeman, G. R.....	Hamilton
Carraway, T. J.....	Jasper	Frost, Sam R.....	Corsicana
Carr, J. S.....	San Antonio	Fulton, Marshall.....	Denton
Carter, A. M.....	Fort Worth		
Carter, Champe.....	Calvert		
Charlton, Wm.....	Kaufman	Gaines, W. P.....	Austin
Chesley, A.....	Bellville	Gammage, T. T.....	Palestine
Clark, George.....	Waco	Gardner, B. H.....	Fairfield
Cleveland, C. L.....	Galveston	Garnett, M. W.....	Houston
Coffe, John T.....	Georgetown	Garrett, C. C.....	Brenham

Garrett, N. P. .... Cameron  
 Garrison, James L. .... Henderson  
 Gibbs, B. .... Dallas  
 Gibson, James P. .... Rusk  
 Goldthwaite, Geo. .... Houston  
 Gooch, John Y. .... Palestine  
 Goodrich, L. W. .... Marlin  
 Gordon, John A. .... Decatur  
 Gosling, H. L. .... Castroville  
 Gould, R. S., sr. .... Galveston  
 Gould, R. S., jr. .... Galveston  
 Grace, Charles D. .... Bonham  
 Graham, W. J. .... Henderson  
 Green, John A. .... San Antonio  
 Green, N. O. .... San Antonio  
 Greer, H. W. .... Corsicana  
 Gresham, Walter .... Galveston  
 Grigsby, W. H. .... Montague  
 Grimes, S. F. .... Cuero  
 Grothaus, L. C. .... San Antonio  
 Guinn, R. H. .... Rusk  
 Gurley, E. J. .... Marlin

Haggerty, J. J. .... Bellville  
 Haldusek, A. .... LaGrange  
 Hamblen, E. P. .... Houston  
 Hamblen, W. P. .... Houston  
 Hanscomb, S. S. .... Galveston  
 Harcourt, John T. .... Galveston  
 Hardy, Rufus. .... Corsicana  
 Hare, Silas. .... Sherman  
 Harris, A. J. .... Belton  
 Harrison, R. H. .... Waco  
 Harwood, T. M. .... Gonzales  
 Harwood, T. F. .... Gonzales  
 Head, H. O. .... Sherman  
 Hefley, W. T. .... Cameron  
 Henderson, T. S. .... Cameron  
 Herring, M. D. .... Waco  
 Hill, George L. .... Marshall  
 Hogan, W. A. .... Indianola  
 Hogsett, J. Y. .... Fort Worth  
 Holmes, H. M. .... Mason  
 Houston, A. W. .... San Antonio  
 Houston, Reagan. .... San Antonio  
 Howard, Russell. .... San Antonio  
 Hume, F. Charles. .... Galveston  
 Hurt, J. M. .... Dallas

Ivy, V. H. .... Hillsboro

Jack, D. M. .... Galveston  
 Jackson, A. M., sr. .... Austin  
 Jackson, A. M., jr. .... Austin  
 Jackson, Hugh. .... Wallisville  
 Jerdone, W. M. .... Galveston  
 John, A. S. .... Beaumont

Johnson, T. L. .... Seguin  
 Johnston, W. M. .... Centreville  
 Jones, S. W. .... Galveston  
 Jones, C. Anson. .... Houston  
 Jordan, C. W. .... Cleburne  
 Joseph, Thomas M. .... Galveston

Keaghey, John S. .... Jasper  
 Kennard, John B. .... Anderson  
 Kirk, Lafayette. .... Brenham  
 Kirven, O. C. .... Fairfield  
 Kittrell, N. G. .... Centreville  
 Kleberg, M. E. .... Galveston  
 Kleberg, Rudolph. .... Cuero  
 Klien, H. .... Houston  
 Kone, Ed. R. .... San Marcos

Labatt, H. J. .... Galveston  
 Lamont, Alex. .... San Antonio  
 Lane, E. R. .... Austin  
 Lane, John. .... LaGrange  
 Lea, James V. .... Cold Springs  
 Ledbetter, W. H. .... LaGrange  
 Lee, John D. .... Corsicana  
 Leopold, Louis. .... Galveston  
 Lessing, W. H. .... Ben Ficklin  
 Levi, L. .... Galveston  
 Lewis, Everett. .... Gonzales  
 Lightfoot, H. W. .... Paris  
 Lockett, C. C. .... Caldwell  
 Logue, L. J. .... Columbus  
 Looney, F. B. .... Butler  
 Loosan, M. .... Houston  
 Lotl, E. H. .... Cameron  
 Lovejoy, John. .... Galveston  
 Lumpkin, S. H. .... Meridian  
 Lyle, Richard. .... Belton

Mann, Geo. E. .... Galveston  
 Mann, H. K. .... Galveston  
 Mantooth, Edwin J. .... Homer  
 Marr, D. P. .... Pleasanton  
 Martin, Thomas P. .... Fort Worth  
 Masterson, B. T. .... Galveston  
 Masterson, James. .... Houston  
 Mason, George. .... Galveston  
 Mason, J. R. .... San Antonio  
 Matlock, A. L. .... Montague  
 Mayfield, C. H. .... San Antonio  
 Maxey, T. S. .... Austin  
 Maxey, J. M. .... Meridian  
 McCampbell, Jno. S. .... Corpus Christi  
 McComb, John E. .... Montgomery  
 McCormick, George. .... Columbus  
 McCoy, John C. .... Dallas  
 McFarland, J. B. .... Brenham  
 McKay, H. .... Jefferson

McKie, W. J.	Corsicana	Robson, W. S.	LaGrange
McKinnon, A. P.	Hillsboro	Rogers, R. E.	Fort Worth
McKinnon, Neill L.	Schulenberg	Rose, Forster	Galveston
McLeary, J. If.	San Antonio	Rucker, W. P.	Felton
McLemore, M. C.	Galveston	Russell, L. B.	Refugio
Meade, G. P.	Henrietta	Russell, T. J.	Beaumont
McIvau, H. S.	Seymour		
Mills, A. N.	Galveston	Sampson, Alex.	Galveston
Mittler, James F.	Gonzales	Saunders, X. B.	Belton
Minor, F. D.	Galveston	Sayers, J. D.	Bastrop
Mitchell, J. M.	Houston	Sayles, John	Brenham
Moore, John W.	Albany	Sayles, Henry	Galveston
Morgan, Richard, jr.	Dallas	Scott, J. Z. H.	Galveston
Mott, M. F.	Galveston	Scott, B. R. A.	Galveston
Murphy, J. B.	Corpus Christi	Scott, D. H.	Paris
		Searcy, I. G.	Austin
Neblett, B. S.	Corsicana	Searcy, W. W.	Brenham
Newton, S. G.	San Antonio	Sexton, Frank B.	Marshall
Noble, S. B.	Galveston	Shaw, W. N.	Houston
		Sheeks, James D.	Austin
Oatis, M. A.	Cleburne	Shelley, N. G.	Austin
Oliver, W. C.	Houston	Shepard, Seth	Galveston
O'Brien, Geo. W.	Beaumont	Showalter, W.	Laredo
O'Neil, J. M.	Decatur	Shropshire, E. L.	Comanche
Osche, J. E.	San Antonio	Shropshire, B. D.	Comanche
Owsley, Alvin C.	Denton	Simkins, E. J.	Corsicana
		Simkins, W. S.	Corsicana
Paine, T. J.	LaGrange	Simpson, Isaac P.	San Antonio
Paschal, George	San Antonio	Simpson, French	Columbus
Pearson, P. E.	Richmond	Simpson, J. B.	Dallas
Peck, L. L.	Fairfield	Sims, M. L.	Clarksville
Peeler, A. J.	Austin	Sinks, Ed. R.	Giddings
Phelps, R. H.	LaGrange	Smith, Tilman	Cleburne
Ponton, T. J.	Gonzales	Smith, Geo. W.	Terrell
Pope, A.	Marshall	Smith, J. P.	Fort Worth
Pope, W. H.	Marshall	Solomon, E. E.	Wallsville
Porter, R. L.	Greenville	Sorley, William	Fort Worth
Prather, William L.	Waco	Sparkman, L. C.	Decatur
Prendergast, H. D.	Austin	Spencer, F. M.	Galveston
Prendergast, F. H.	Franklin	Spivy, W. W.	Henderson
Prier, M. D.	Fort Worth	Spooner, T. H.	Gonzales
Proctor, D. C.	Cuero	Stayton, John W.	Victoria
		Stayton, Robert W.	Victoria
Quinan, George	Wharton	Steadman, William	Marshall
		Stephens, John H.	Montague
Rainey, Anson	Waxahachie	Stockdale, F. S.	Cuero
Randle, E. B.	Brenham	Stout, J. F.	Corsicana
Read, F. N.	Corsicana	Strange, W. T.	Dallas
Rector, John B.	Austin	Stratton, T. W.	Georgetown
Rector, N. A.	Giddings	Street, Robert G.	Galveston
Reese, T. S.	Hempstead	Stubbs, James B.	Galveston
Rhodes, H. W.	Galveston	Styles, Carey W.	Fort Worth
Roach, I. N.	Weatherford	Swain, W. J.	Clarksville
Roberts, J. C.	Fairfield	Swan, A. K.	Henrietta
Roberts, O. M.	Austin	Swearingen, J. T.	Brenham
Robertson, John W.	Austin		
Robertson, H. G.	Tyler	Talliaferro, S.	Houston
Robtison, C. S.	Terrell	Tarleton, B. D.	Hillsboro

Taylor, L. N.....	Runnels	Walton, W. M.....	Austin
Templeton, John D.....	Fort Worth	Ward, P. H.....	San Antonio
Terrell, A. W.....	Austin	Watts, A. T.....	Dallas
Terrell, J. O.....	Terrell	Waul, T. N.....	Galveston
Terry, J. W.....	Galveston	Webb, W. G.....	Houston
Thompson, Wells.....	Columbus	West, C. S.....	Austin
Todd, C. S.....	Boston	West, R. G.....	Austin
Todd, George T.....	Jefferson	West, S. P.....	Woodville
Trezevant, L. E.....	Galveston	Wheeler, R. T.....	Galveston
Tucker, Phillip C.....	Galveston	White, John P.....	Seguin
Turner, E. P.....	Houston	Whitman, M. J.....	Rusk
		Wilkes, F. D.....	Lampasas
Upson, C.....	San Antonio	Wilkins, W. W.....	Sherman
		Willetts, G. B.....	Austin
Vernor, Henry E.....	San Antonio	Williams, Eugene.....	Waco
		Willie, A. H.....	Galveston
Waelder, Jacob.....	San Antonio	Wilson, J. H.....	Galveston
Walker, A. S.....	Austin	Wilson, W. L.....	Galveston
Walker, John C.....	Galveston	Willson, Sam A.....	Rusk
Walker, Richard S.....	Nacogdoches	Willson, Sam P.....	Rusk
Wallace, W. R.....	Castroville	Wood, W. D.....	Centerville
Walling, W. W.....	San Antonio	Woodward, W. H.....	Indianola
Walshall, L. N.....	San Antonio	Wynne, R. M.....	Henderson

## DECEASED MEMBERS.

BONNER, M. H., Tyler, Died November 25, 1883.  
 FRISBIE, W. H., Groesbeeck, Died September 12, 1882.  
 LANGUILLE, P. T., Galveston, Died October 14, 1882.  
 MOORE, GEORGE F., Austin, Died August 30, 1883.  
 READ, N. C., Corsicana, Died ———1884.  
 TIMMONS, B., LaGrange, Died ———1884.

## ANNUAL ADDRESS

OF

# HON. J. H. McLEARY,

PRESIDENT OF THE TEXAS BAR ASSOCIATION.

*Gentlemen of the Texas Bar Association:*

It is a source of great pleasure to me thus to greet you assembled in the Third Annual Session of our Association. The natural pleasure is increased by the fact that our meeting is held here in the ancient and historic city of San Antonio.

No spot on earth is dearer to me than the City of the Alamo, where I have made my home for the last fourteen years. No town in Texas has more charms for the patriot, whether he may be historian, sage or soldier, than this, the birthplace of Texan liberty.

Travis, Crockett and their compeers have made our soil forever sacred to heart and memory. The bloodiest and the brightest page of Texas history records the deeds of those who dared to die in yonder ancient temple of the Alamo, that we might live to-day as free men.

No doubt it was reflections such as these that caused this Association to fix upon San Antonio as the place for its present assembly.

In the name of more than thirty thousand of my fellow citizens, and in the name of the Bexar Bar Association, and in the name of the members of the local bar, I bid you welcome to the hospitality of San Antonio.

No warmer hearts can greet you anywhere than here. No fonder friendship can fold you round than such as may be formed and fostered here. Our people fully appreciate the great mission which your profession has to fulfill. Of that high calling and the grand achievements which lawyers of all ages have accomplished in the cause of popular liberty and free constitutional government, time does not suffer me now to speak; and were it not for the rules of our Association I would close what I have here to say, simply with these words of welcome. But our Constitution says "the President shall open each meeting with an address, in which he shall communicate the note-

worthy changes in Statutory and Constitutional Law, and especially such changes as affect the development and progress of the Law and the administration of Justice."

There have been no changes in the Constitutional Law of Texas, during the past year; nor can I say that the changes in the Statutory Law have been noteworthy or in any great degree likely to affect the administration of justice. But I believe all changes made in the Statutory Law are of sufficient interest to us, as members of the legal profession, and to our Association, to justify at least a casual review of State Legislation at least once a year. With such views, then, permit me to bespeak your patience while I invite your attention to the acts of the last session of the Nineteenth Legislature. My predecessor commended the Legislature for what it had not done at its regular session. It is entitled to like praise for the volume which it has laid before us for the present year. What it has done fills a very small pamphlet. What it has not done might make a library. But I am not sure that its members might not say in the beautiful words of the general confession: "We have left undone those things which we ought to have done, and we have done those things which we ought not to have done."

But let us not criticise them too harshly, but pass on to a review of their labors.

There has been only one session of the Texas Legislature during the present year. That was a special session convened by proclamation of the Governor on the 8th day of January, and continuing thirty days.

Of course, under the Constitution, its labors were confined to the fourteen subjects set out in the proclamation of the Chief Executive, which are as follows:

1. To provide for the levy and collection of a tax to maintain a system of free schools, under the amended Constitution.
2. To adjust the free school law to the requirements of the amended Constitution.
3. To reduce taxation for general revenue purposes.
4. To effect necessary legislation so as to protect the interests of the State, and provide an equitable rule, in the re-sale of lands purchased by the State at tax sales, between the original owner and the State.
5. To consider and provide a remedy for wanton destruction of fences.
6. To provide a more efficient system of highways, and to amend the law providing a penalty for enclosing school lands.
7. To provide some mode by which the agents of the State at the Capital can take care of and protect the property of the State.

8. To amend the law organizing the Judicial Districts of the State.
  9. To determine whether or not the common school funds shall be invested in any other securities than those named in the Constitution; and, if so, to provide therefor.
  10. To determine whether or not the State shall be represented at the Exposition to be held in New Orleans in 1885; and, if so, to provide therefor.
  11. To make appropriations to meet deficiencies in appropriations heretofore made for Texas Veterans, and the contingent expenses, the per diem pay and mileage of the Eighteenth Legislature.
  12. To authorize counties to issue bonds for the purpose of funding their indebtedness, created for other purposes than for the erection of court houses; and to allow the Board of Education to transfer State and Federal bonds to the University fund.
  13. To amend the law passed at the regular session of the Eighteenth Legislature, approved April 12, 1883, entitled "An Act to provide for the classification, sale and lease of lands heretofore or hereafter surveyed and set apart for the benefit of the Common School, University, Lunatic, Blind, Deaf and Dumb, and Orphan Asylum funds.
  14. The re-enactment of the bill amending the attachment law, passed at regular last session, but which never reached the Executive.
1. The law providing for the levy and collection of a school tax of a mill and a quarter on the dollar was passed just before adjournment. Whether or not this tax will be sufficient, with the other available funds, to support the public schools for ten months in the year, has not yet transpired. Should it not be, it should be increased to the full constitutional limit of two mills on the dollar.
  2. A law was also passed to meet the requirements of the amended Constitution in regard to free schools. As it was prepared by the Secretary of the Board of Education, and covers more than one fourth of the pamphlet in which the laws of the special session were published, it is to be presumed that it will accomplish its purpose. It is certainly an improvement on the old law, in making a more perfect organization of the school system, and creating a responsible head in the person of a Superintendent of Public Instruction. It is to be hoped that this new system may at least be capable of gradual amendment and perfection.
  3. The Legislature reduced taxation about one-half and separated the school tax from the general revenue tax; a reform which experience has shown to be absolutely necessary in order to raise sufficient means to support the public schools without having a surplus of general revenue lying idle in the treasury.
  4. It has always been the policy of Texas to give its taxpayers every opportunity of redeeming lands sold for taxes, but it admits of



grave doubt if the law passed by the last Legislature, (Chap. XIX), does not go too far in that direction. Owners of lands which have been sold for taxes, and bid in by the State, are practically given an indefinite time within which to redeem them. The Comptroller could not have any sales made under the act until the 5th of August, and six weeks' notice of sale is necessary and then owners have until sale day to redeem. No sales have as yet been made under this law. How much further the next Legislature may extend the time for redemption remains to be seen.

5. The next subject mentioned by the Governor in his proclamation was the "wanton destruction of fences." At our last annual meeting we had the benefit of an excellent paper on the fence-cutting troubles, read by A. J. Peeler, Esq., of the Austin Bar, and the subject of fence-cutting and the kindred agitation of free grass has troubled the political waters of Texas for twelve months past. It seems that the legislation had by the last session was not sufficient to put the questions at rest by any means. The most serious problems for the consideration of our law makers are still those in regard to fencing and pasturage. About all that the last Legislature did in regard to the matter was to make fence-cutting a felony, punishable by confinement for a period of from one to five years in the penitentiary. For all that, fence-cutting has not altogether ceased. The source of the disease has not been reached, and until that is done, the remedy cannot be efficient.

6. Closely connected with this subject is the question of a more efficient system of highways and the enclosing of school lands, to which the Governor called the attention of the Legislature in his proclamation. The road laws were amended to some extent by the addition of provisos and other sections. The County Commissioners are made Supervisors of roads in their respective precincts, and provisions are made for laying out roads through large pastures, and some other small amendments are provided for in the same direction; but the faulty system of working the roads by the personal services of the people living in the neighborhood is left intact.

7. No good system of public roads can be inaugurated under such a method, which is a remnant of ante bellum days and should have been swept from the statute books with slavery, to which it is closely allied in origin and operation.

A very thorough and proper law was enacted against fencing lands belonging to others, which also applies to the School, University and Asylum lands. If it is enforced it will tend to effectually eradicate free grass and give the school fund the full benefit of the property which our children have in their heritage, left them by the generosity and valor of the early Texas patriots.

7. The Legislature passed the law suggested by the Governor in the

seventh paragraph of his proclamation in regard to the protection of State property.

8. But the Legislature seemed specially diligent in regard to "amending the law organizing the Judicial Districts of the State." No less than eight laws were passed on the subject, being those contained in Chapters 3, 5, 6, 7, 8, 9, 15 and 20, of the Acts of 1884. We have now thirty-eight Judicial Districts in Texas, and as long as our great State continues to increase in wealth and population, it will devolve on almost every session of the Legislature to provide new districts and adjust the terms of court to suit the requirements of our growing people.

9. The Legislature did not see fit to "determine whether or not the common school fund shall be invested in any other securities than those named in the Constitution; or to provide therefor," as suggested by the Governor's proclamation, doubtless believing that the bonds of the United States, the State of Texas, or the counties in said State, were the safest and best securities, especially as the Constitution requires the State to be responsible for all its investments.

10. The Legislature also passed an act to provide for the representation of the State of Texas at the Centennial Cotton Exposition to be held at New Orleans next month and next year; but the appropriation (\$20,000) was ridiculously small when the magnitude and importance of the exhibition and the greatness of our interests are considered. The least that can be said of this act is, that it is "penny wise."

11. A deficiency appropriation bill amounting to \$340,372 20 was also passed, besides the appropriations for mileage and per diem of the Legislators. It is a matter of surprise that the regular session should have left this important legislation undone.

12. The Legislature also failed "to authorize counties to issue bonds for the purpose of funding their indebtedness, created for other purposes than for the erection of court houses," nor did they "allow the Board of Education to transfer State and Federal bonds to the University fund."

13. The thirteenth subject submitted by the Governor to the Legislature does not appear to have been directly considered. The act to provide for the classification, sale and lease of School and Asylum lands, approved 12th April, 1883, was not directly amended, but it was supplemented by Chapters 26 and 35 on kindred subjects.

It is to be regretted that this subject did not receive more careful attention at the hands of the Legislature. It is a question which the people are fully determined shall be met and solved in a spirit of fairness and with the foresight of statesmanship; and nothing short of this will meet the popular demand or satisfy the people's sovereign will.

14. The Legislature failed to touch the attachment law. Just how a law could be passed by the Legislature and never reach the Executive for approval or veto, does not exactly appear. This one referred to in the proclamation seems to have fallen by the way-side—into some pigeon-hole or other.

It is not to be presumed that the Governor approved of the enactment of laws on all of the fourteen subjects which are mentioned in his proclamation, or that the Legislature was altogether hostile to such as were not legislated upon. But doubtless the Executive was prevailed upon to submit some subjects to the consideration of the Legislature by the importunity of friends, or for other reasons, and that owing to the shortness of the session and hurry of business, the conflict of interests and the clash of uncongenial minds and tastes, many important matters were passed over which, on more mature reflection and calmer deliberation, would have been formulated into wise and wholesome laws.

The Legislation of this particular session is exceptionally crude and bungling. There are eight separate laws in amendment of the law dividing the State into Judicial Districts; when good taste and even good sense would dictate that one only should have been passed, and that, making all necessary changes.

There are two laws passed on the 2d and 5th of February respectively, in precisely the same words, providing that "no public road shall be altered or changed except for the purpose of shortening the distance between the point of beginning and the point of destination."

Other laws conflict with each other, especially the five which are devoted to public roads.

In reviewing the Texas legislation of 1884, we must be at least convinced that we ought to have more lawyers in the Legislature, or better ones; and that all laws should be remitted to a Board of Revision before being finally passed and promulgated—as is done in the English Parliament. This sort of law making has become a great and growing evil which sadly needs reform. No broader or better field of usefulness is open to the Bar of Texas than reform in the machinery of making statutes; unless, indeed, it be in the judicial administration of the laws and the practical dispensation of justice by the courts themselves.

The objects of the Texas Bar Association are declared to be "to advance the science of jurisprudence, promote the uniformity of legislation in the administration of justice throughout the State, uphold the honor of the profession of the law, and encourage cordial intercourse among its members." We are now entering upon the fourth year which our Association has spent in the pursuit of these laudable objects. Our success has been as great, perhaps, as could have been

expected. Heretofore our very organization has been looked upon as an experiment. Many eminent lawyers in Texas have held aloof, regarding our society as merely the result of a transient fancy or the product of a short-lived enthusiasm. But day by day the number of such doubters as these has been growing less, and our membership has been steadily increasing year by year. We have now upon our roll 340 members, and among them some of the brightest names which have adorned the history of Texas Jurisprudence. With our organization thus assured, with such a membership as we can boast of, we may confidently hope for the attainment of the objects which we have set before us as the ultimate reward of our united labors in the field of judicial reform. But the science of jurisprudence is a progressive one, and if we approximate the goal of our ambition, the race which we shall run will be none the less glorious.

I have already said something about the promotion of salutary legislation, and committees have been appointed, each with an able membership, to consider the other objects of our Association, and no doubt their reports will be erudite and exhaustive, and present to the Association much food for thought and many avenues for energetic action. I had intended in this address to say something to you in regard to the construction of Constitutional and Statutory Law and the importance of a profound study of the rules governing that branch of jurisprudence. The field is an inviting one, yielding a fruitful harvest, combining the flowers of fancy with the golden grain of wisdom. But the path of duty, as marked out in our Constitution, has led me only along the borders of this inviting garden, and time forbids me to loiter long enough to pluck a single flower from its hedges as I pass. On some other occasion, perhaps, it may be permitted me to wreath a garland of these roses and heads of wheat, and cast it as an offering at the feet of my fellow-members.

I sincerely hope, gentlemen, that your deliberations now thus begun in order may be continued in harmony and prove fruitful in good to our profession and the State. I am sure that no words of mine can add to that deep sense of responsibility which each one feels in his own heart as resting upon this Association and its members. As long as our profession continues to be, as it has been in all ages, the chosen guardian of the Constitution and the laws, the paladium of popular liberty and the sheet anchor of free government, associations such as this must realize the high destiny ordained to them by fate, if they but remain true to their traditions, their history, their principles and their honor.

To good men and true, banded together with a high purpose and a

firm resolve, all things are possible. Aided by the light that shines from history's pages, with hearts warmed by the consciousness of patriotic devotion, with intellects cleared and sharpened by laborious study and intellectual toil, the members of our Association may reasonably hope that their united labors will result in lasting benefit to our country.



# THE ANNUAL ADDRESS

DELIVERED BEFORE THE

# TEXAS BAR ASSOCIATION

BY B. H. BASSETT, Esq., OF BRENHAM.

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*Mr. President and Gentlemen of the Bar Association:*

The Board of Directors have honored me with a commission to deliver the Annual Address, for which provision is made in the By-Laws of the Association.

The nature of the address intended is not indicated in the Constitution or the By-Laws, and the Association has been in existence too short a time for custom to have established any trustworthy precedent by which your orator could be guided in the choice or treatment of his subject. Like our first parents on their expulsion from the garden, he shudders to find that "the world is *all* before him where to choose." This very freedom from restraint is itself a hindrance; and he ventures to crave in advance your indulgence, should it appear that his conception of the purpose and proprieties of the occasion differ from your own.

I ask your attention to some reflections on

## THE LAWYER AS A CITIZEN.

It has been justly observed by a distinguished law writer that as under more liberal forms of government and society, special privileges and selfish interests are steadily yielding to great principles enforced for the common welfare. Every individual, class and profession is being more and more required to consider and promote the public good. And if it be true, as we are told, that our opportunities are the measure of our responsibility, then the gravity of the trust with which the legal profession is charged ought to be a subject not only of the profoundest interest, but also of the most conscientious solicitude.

No other guild or occupation enjoys in a free state such a practical monopoly of honor and profit, in connection with the administration of the government, as does the profession of the law. All the interests of civil society are practically in its keeping. The security of property, the maintenance of rights, the protection of innocence, the punishment of guilt and the construction of laws, constitutions and treaties. Regarded as a mere business calling and means of livelihood, or even as a mode of accomplishing an honorable ambition, the profession does not disclose its widest and highest utilities and responsibilities. The American lawyer has for good or evil functions, varying according to his capacity and activity, and his consequent influence as a moulder of public opinion, a politician in the higher sense and even as a statesman. Under our system, he is indeed a part of the government itself, no less than if he were nominated and commissioned in office.

According to the last United States' census the number of persons classified as lawyers is about 60,000. Many of those so classified are doubtless, so to speak, merely ornamental members of the profession, and the probable number of working members may be stated approximately at 40,000 in a population of over 50,000,000, or about one in 1,250. In Texas the proportion of lawyers to population is about one in a thousand. But, notwithstanding the disparity in numbers, we find them occupying a large majority of the higher offices of the State and of the nation. In one department of the government—the Judicial—they have an absolute monopoly, and in another—the Executive—nearly so. In the Legislative Department they have not always been a majority, but it is safe to say that they have pretty uniformly had a controlling influence in the framing of laws, by reason of their superior ability and training.

Such a condition appears at first view to be abnormal, and it occasionally excites invidious comment and complaint, but it is susceptible of an easy explanation. In older communities, especially in Europe, the governing class is for the most part made up of gentlemen of education and wealth, not belonging to any profession, who having a taste for public affairs and the means and leisure with which to indulge it, qualify themselves for office by study and training, and from this class the office-holders are largely recruited.

In the United States, and especially in the South and West, we have no gentlemen of leisure, but are all still working out the primal curse which requires us to eat our bread in the sweat of our faces, and the duty of office-holding naturally devolves on the class whose education and training most nearly fit them, on the whole, for the execution of the trust.

The lawyer takes the lead in the discussion and determination of public questions, not alone, nor chiefly, because of any superior learn-

ing or natural ability, but because by his training and habit he is accustomed to take a practical view of them, to express his convictions promptly and frankly and to maintain them boldly, but more perhaps because of the toleration with which he is accustomed to treat the dissenting views of others, and to modify his own—a spirit which is not apt to be fostered by either of the other professions. Accordingly we find that, as a rule, doctors, ministers, editors, agriculturists, mechanics, merchants, teachers and others, even when possessing superior attainments, shrink from the collisions of the hustings and the council chamber, for which their training and habits have not only failed to fit them, but have practically unfitted them.

But whether or not this be the true or the only reason for it, the fact remains that in every sphere where political force and public action are generated or moulded, the lawyer is found to exert a controlling influence. And if ours is to be a government, not of men, but of laws, what superadded duties as citizens are not imposed upon those who adopt as theirs the profession of the law? The common judgment of mankind rightly holds the enlightened and the influential chiefly responsible for the welfare of the State, and all the more justly in a community where such qualifications constitute the only recognized aristocracy.

The statement of the facts constitutes the argument of the proposition that for weal or woe the fate of the Commonwealth is largely dependent upon the integrity and ability of the Bar. No other profession is so public; none is so competent; none is therefore charged with the same responsibility for whatever in public affairs may be wrong, for whatever government ought to do but leaves undone, and for whatever is unworthy and base in its own ranks.

I pause for a moment's reflection on a subject of grave concern and interest to the public, even more than to the profession itself: I refer to the loose and careless mode which prevails of admission to the bar. In nearly every State in the Union, almost anyone who has the requisite age and the most moderate educational attainments, may obtain a license to practice. No good to themselves, but much prejudice to the profession and much detriment and danger to the community is caused by the facile admission to the practice of men unfitted by education, study and discipline for the duties of the profession. And a still graver cause of regret is to be found in the fact that a higher standard of personal character is not required as an essential qualification of him who seeks admission to the priesthood which ministers at the altar of justice!

What has been said indicates, in some measure, the weight of the lawyer's responsibilities in the domain of politics. But his opportunities and his consequent responsibility extend much further, and even more profoundly affect the popular tone and character.



Lawyers constitute *par excellence* the confidential class in the community. In the complex affairs of civilized society, simplicity in the law becomes practically impossible, and in the endless variety of contract and consideration the transfer and the protection of property require more and more the supervision and direction of the carefully educated and reliable legal counsellor, and the magnitude, the difficulty and the delicacy of the matters submitted to his judgment increase daily. Perfect good faith, strict personal honor, educated intelligence and a practical acquaintance with affairs, combined with a knowledge of the law, are necessary for all who would become members of the legal profession, and those who would stand in its front rank and reap its best rewards will be the first to recognize and appreciate its duties and responsibilities.

All men feel at times the need of reposing trust and confidence somewhere, and in those seasons of doubt and distress, from which none can hope to be always exempt, the most self-reliant is compelled to call in the aid of some cool, clear-headed counsellor to protect and guard his rights of person and of property, and to keep his feet straight in the paths of rectitude and safety.

Such confidential communications necessarily reposed in them by all classes and occupations of men, give to the legal counsellor an influence in the direction and control of society, which ought to be, as it generally is, accompanied by a corresponding sense of moral responsibility. The law itself recognizes and respects such confidences, and sternly refuses to permit the privilege of such communications, once made under the sanction of the relation of client and counsel, to be betrayed or invaded under any pretext whatever. The human soul must have a human sanctuary to which it may in times of danger and distress repair and deposit in safety the secret of its hopes and fears, and the reflection that by the common consent of society ours is the profession chosen to receive and keep these sacred confidences, is well calculated to elevate its practice and to dignify its membership.

But the duty of receiving and keeping inviolate the most delicate and vital secrets of individuals, and to advise them safely and honorably, are not graver and higher than some others touching the State, which demand of every lawyer the exercise of his best and highest qualities; and the history of the profession would present, if time permitted to read them, many a character like that of Thomas More, First Lay Chancellor of England, whose genius and learning, great though they were, pale before the magnanimity and fortitude with which he withstood the schemes of his royal master to subvert the liberties of the people. The beneficent influence of such a character is, like all the great forces of nature, incapable of measurement, but it will never cease in the world, and it will move on without noise or proclamation, irresistibly diffusing itself through the minds and hearts of men and

ameliorating the condition of the race, until it is finally lost in the divine source in which it had its origin.

And while in a Republic civil liberty and law can have no single foe so conspicuous as a monarch, to whom, on occasions of attempted usurpation, defiance must be tendered and resistance inaugurated, in order to maintain those wholesome restraints on power which the law and principles of liberty impose; still there have been and ever will be times of popular excitement, when the voice of reason, moderation and justice is drowned by the roar of the multitude, when the individual or the minority that seeks to confine power within its legitimate channels, and to stem the currents of passion, is like to be overborne and even to perish in the conflict.

There is no oppression so heavy and unsparing, no tyranny so relentless and inexorable as the passionate and unbridled will of a popular majority. Then comes the heyday of the demagogue and the teacher of sedition; forth from their hiding places issue all the foes of society, each armed with some congenial weapon to wipe out old scores and wreak their revenges for former restraints and slights. Then comes a strain on the institutions of free government, and society turns in the instinct of self-preservation to that class, ignored or perhaps contemned before, who have adopted the law as their profession and made its precepts and practice the study of their lives and their means of livelihood. It is at such crises that the lawyer, conscious of his great social duty and cased in the armor of lofty and clear convictions, is called to the exercise of his highest and holiest functions, and at whatever cost of personal sacrifice or peril, he must answer the summons!

And since I have thus adverted to some of the dangers to our government from unchecked majorities, let me add a word as to some of the conservative forces in American society.

We have first of all the experience and traditions of many generations, trained and educated in the school of self-government and practiced in the habits of civil and religious freedom. We have a history filled with the noblest instruction, in the lives and characters of the men who fought and gained with the sword their independence and peace with honor. We have the great heart of a free people, carrying their fate in their own hands, and proudly conscious of the fact. We have public intelligence enlightened by self-interest and expanding and fortifying itself daily by the establishment of schools of learning and the wide dissemination of popular education.

Let us have faith in human nature. If we lose faith in that, what can we believe in? To what instrumentality can we turn in our hopes to establish and maintain the control of law and justice among men? Our countrymen are generous and heroic; they respect and love best their best men when they come to discover and know them. Time-

servers and tricksters and sensational demagogues have for a season, and may yet again for a season, wheedle and beguile a community of its approval, but not for long, thank God, not for long !

The influence of the lawyer is immensely increased by the fact that he is one of a profession whose members have a similar education, take the same oath, have like sympathies and interests, occupy the same sphere, are accustomed to the same reasoning and standards of conduct, and may be readily organized into co-operative efforts so that their power and influence may be easily combined. The bar of every county and city is in some degree an organized body with the means of co-operation, and is linked into the entire profession of the State and the Union. The rapid spread of State Bar Associations which, beginning with that of New York in 1870, has crossed the continent, marks the growth of a patriotic and unselfish spirit in the profession which appreciates its aggregate power and responsibilities, and is auspicious of great results. A careful reflection upon the duties of a profession with means and capacity so ample will make it plain that their duties are not confined to its own judicial department, but exist in the spheres of Legislative and Executive affairs hardly less; that they extend not only to various methods and false theories, but to unfounded opinions and misleading prejudices accepted by the ignorant by which our institutions are threatened and which the reasonable efforts of a learned profession have it in their power to remove.

Gentlemen, I must not abuse the privilege of the occasion to weariness—still suffer me to narrow my discourse to the practical question : How shall the great responsibilities and the social duties which we have taken upon ourselves by the choice of our profession be properly met and discharged ?

Our professional brotherhood is scattered everywhere over this broad land, naturally in greater numbers in the busy centers of trade and commerce, but found also in the rudest and remotest regions—however sparsely populated. Wherever there is a right to be protected or a wrong to be redressed, wherever the need of peace and order is felt, there the student and the practitioner of law finds a field of useful occupation, and each of them is, or should be, potent a factor in the education of the people to a proper sense of their responsibilities and duties; education, not by indoctrination, but by development from within under suggestions from without.

The intelligence of the country must be organized against the ignorance of the country. The reason, capacity and habits of the people must be organized to protect personal liberty and the rights of property from the flood of passions, which at times rises so high and carries in its wild career such moral and material desolation. And remembering that our hopes for the maintenance of peace and order all rest on the capacity of the people to be educated to a comprehen-

sion of truth and justice, and the necessity of their maintenance by the establishment of a government of laws, what agency can be more efficient than our profession to diffuse throughout the land the precept and the example of testing the right to do a thing by its consonance with the laws of the land, remembering that nothing that is unjust can hope to continue, because nothing but justice deserves to live?

It is not only when he is on the bench that the lawyer is to remember to be just, but amid the seductions of ambition, the temptations to acquire wealth and the excitements and allurements of advocacy, he must be mindful that the great end of all the machinery of law and courts, of judges, juries, pleading and evidence is to prevent the failure of justice. There is no profession among men requiring greater moral courage and devotion to principle; none which so often demand defiance and resistance to the rich and powerful, forbearance for the weak, the ignorant and the helpless, and the championship of those who are proscribed by society, than that of the law.

Abuses of the law and the law-making power will creep in under any form of government, and to the ranks of that profession which makes law its study and the spirit of justice enshrined in law its guide, we must look chiefly for the advocacy of reform and repeal that will check the growth of undue advantage, and regulate and restrain the rapacity of corporate or commercial greed, whatever may be the form of its approach, or the disguise it may assume.

One constantly recurring danger to liberty, against which the influence of the legal profession should be steadily opposed, is the disposition of rulers in times of public danger and excitement to resort to irregular expedients in order, possibly, to avert for the moment some threatened danger, and this at the expense of violating the great principles of free government—unmindful of the repeated admonitions of history “that civil power, like every other which calls in the aid of an ally stronger than itself, perishes by the assistance it receives.” And there is always at such seasons a well-meaning class of citizens, emotional in their nature and philanthropic in their intentions, who are ever ready to act upon the rule that if a thing serve a present useful purpose, it is just and proper that it should be done.

Experience abundantly teaches that every extra legal remedy is not only costly and dangerous but delusive, and that true safety alone consists in holding the ship of State fast to the anchorage of the law and in a strict adherence to constitutional forms and methods. In the words of that eminent jurist, Benjamin R. Curtis, “Ours is not a government of men; it is a government of laws, and the laws are required by the people to be in conformity to their will as declared by the constitution. Our loyalty is due to that will. Our obedience is due to those laws. And he who would induce obedience to other laws

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springing from sources of power not originating with the people, but in casual events and in the mere will of the occupants of places of power, does not exhort us to loyalty, but to a desertion of trust."

Therefore, gentlemen, whether we have a share in the great trust of judicial power, or accept of public service as makers or executors of the laws, or whether we remain at the post of honor in the ranks of the profession, let us see to it that the priceless heritage of constitutional government received from our fathers suffer no detriment at our hands, and that it be transmitted unimpaired to the children who come after us.



## LEGAL EDUCATION

— AND —

# ADMISSION TO THE BAR

BY EX-GOV. O. M. ROBERTS.

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*To the President and Members of the Texas Bar Association :*

GENTLEMEN—Legal education is the work of a lifetime, and then it is not complete. To any one devotee it is like a long stream that commences with a small flow at its source, increasing by the confluence of innumerable tributaries in its descent, and when still swelling with full tide at its mouth, is suddenly lost in the ocean. So it has been with every great lawyer that has adorned his profession through a long life of earnest devotion to it. This results necessarily from the variety, universality and changeable character of the objects embraced in a legal education. The facts subject to judicial cognizance spread over the whole scope of human actions in a country at any one period of its existence, and those actions, together with the objects acted on, must be studied and understood and the rules of law applicable to them must be learned. With the accession of every new element in the progress of the perpetually accumulating development in the immensely diversified objects of social existence, throughout each and every succeeding period, additional study and learning is required to adapt the appropriate rules of law, often modified to suit the changed state of things. This ever changeable diversity relates not only to the physical objects and to the action of persons in regard to them, but also to the mental operations of persons, prompting them to actions according to the different state of society, as it may exist at different periods. All of these things constitute facts of judicial cognizance, and the more thoroughly they are comprehended in all of their phases and relations, the more efficiently will the rules of law be learned and applied to them. As the laws of former times, or former governments that once existed, have attached to property in its acquisition, upon which the right in it may still depend, those laws must be studied, and in order to understand them properly, all of the circumstances relating to that sort of property, in reference to the mode and object of acquisition, its tenure, the interest in it acquired and the purpose of its use, should

be learned as well as the rules of law themselves. Hence it is that the public history of a country becomes a study in legal education, so as to understand the origin of laws and the reason of their introduction, and amendment or modification, and thereby to comprehend the true meaning and application of them.

This gradual increase in the facts of litigation, and in the rules of law to be applied to them, which requires the continued labor of the lawyer, in the expanding field of effort, may be well illustrated by a glancing perusal of the common law and equity reports of England, of the reports of the Supreme Court of the United States, and of the reports of the Supreme Court of Texas.

In the Texas reports it will be seen that for a number of years during the existence of the Republic and for several years afterwards, the subjects of litigation, and the rules of law applicable to them were few, and, to a large extent, statutory and constitutional. From that time to the present there has been a continually increasing diversity in the subjects of litigation and in the rules of law necessary to be applied to them; until now most of the objects, in the full development of a civilized country in the present age, have become the subjects of judicial investigation and decision.

Our code of laws in Texas, now liable to be applied to existing subjects of litigation, is, in part, what is embraced in three distinct fundamental systems of law, to-wit: 1st. Spanish civil law, based largely upon the Roman civil law. 2d. The Common Law and Equity of England. 3d. The American combination of Federal and State Jurisprudence. This is caused by the great number of governments which have existed within the territory now occupied by the State of Texas. Some of the laws of those governments that have passed away have been engrafted upon our existing code by constitutional and statutory enactments; and others lie imbedded in living existence in the rights to real property, acquired during the dominion of those governments. Thus Texas, in its first settlement, by a population of European descent, was a province of the Spanish monarchy, included within the Vice-Royalty of Mexico, then as a part of the State of Coahuila and Texas, in the Republic of Mexico, including now also that part of the State of Tamaulipas east of the Rio Grande, then the Republic of Texas; then a State in the United States of America; then a State in the Southern Confederacy; then part of a Military District of the United States, and lastly a State in the United States. Rights have arisen, and may now have vital validity to be judicially recognized and enforced by virtue of the laws of Texas under all of these governments, though not applicable to the facts or transactions now transpiring. But if we consider the various parts of our body of laws now in force, and operative upon existing and occurring facts, and upon transactions of the present time in Texas, consisting of the law of nations, the Constitution, laws and

treaties of the United States and the Constitution and laws of Texas, including common law and equity, and the statutes of the State now in force, we will find a very broad, diversified, complex and unique system of rules for the government of the people of Texas.

The question now occurs to us, how shall a student approach this heterogeneous mass of legal rules, combined in our system of laws in Texas?

The first requisite is, that he should have that degree of education, and that sort of education, that would enable him to understand well the exact meaning of the words and structure of the English language in conveying definite ideas and a clear representation of things. The proper study of the law will greatly augment his capacity in attaining this desirable accomplishment. And to this should be added a fair general knowledge of the history of England and America. Next, he should begin at the top, and not at the bottom, where he would be searching out point after point in the system as it at present exists, without the previous knowledge having been acquired which is necessary to understand what he is in that way trying to learn. Hence it is that one who has not studied law can seldom understand the full meaning of our statutes in common use.

By beginning at the top is meant that he must go up to the source from which our American institutions and laws have been derived, to wit: The English Government, its laws and jurisprudence. There he will find the origin, history and reason of most of the rules of action, both political and civil, which he may afterwards discover to pervade in modified forms the government and law of his own country. This he must do by reference to and the study of English elementary books, as no American authors have ever as yet written works that will supply their place. Indeed, with our mixed system of Federal and State Constitutions and laws, both controlling the people of the State, and both together constituting their government, it would be a difficult task to present a connected view of our Texas governments and laws, organic and statutory, by which its people are governed. And the task would be greatly enhanced, if it did not result in inextricable confusion, if it were attempted for the general government and all of the States.

Having obtained a complete outline view of the government and laws of England, including common law and equity, and of its various courts, with their respective jurisdictions and mode of procedure, he would then be prepared to read and study books by American authors, many of which exhibit great ability and research, for the most part on special subjects, as a means of learning the modifications and additions that have been introduced in our system of government and laws. The propriety of this proceeding in learning the government and laws of Texas will be readily appreciated by any one who has attempted to make himself proficient as a linguist in different modern



languages. As the Latin language, in its substance and structure as exhibited in its grammar, pervades, to a large extent, most of the European languages, his most expeditious mode of accomplishing his object would be to study the Latin language, which would furnish him with the roots of words in other languages, and, understanding its grammar, whatever difference from it might be found in the structure of others, would be easily learned. From the natural organization of the mind it is prone to fix a standard in the process of thought from which other things, relating to the same subject, are viewed and understood. In constructing and applying laws, we first grasp the general rule in all of its elements and scope, and then we easily understand the qualifications and exceptions to which it is subject when our attention is called to them. When we are construing an act amending a former law, we first examine critically the old law and inquire into the mischief inducing the change, and then we are prepared to comprehend the effect to be given to the amendment. This is not only a rule of legal construction, long established and practiced, but it is a rule founded on reason, under the usual and ordinary operation of the mind. So when we wish to understand a government and its laws, that have been derived from various sources, as is the case with Texas, the most natural process in the effort is to fix a standard by first learning the institutions and laws of the country from which most of its institutions and laws are derived, and then it will not be difficult to learn their modifications, and additions from other sources, found to exist in our own system.

#### ADMISSION TO THE BAR.

Under the laws of Texas, from the time of the Republic, it was provided that an applicant for admission to the bar should be examined, so as to satisfy the court of the sufficiency of his legal qualifications, unless he produced a license to practice law in some other State, from the courts thereof, of the grade equal to that of the court in Texas to which he applied. There being no course of study or list of law books prescribed, upon which the applicant was to be examined, and no degree of proficiency indicated, either by law or by order of the court, the practice was very variant in the different districts, according to the personal views of the District Judges. It may be said generally, however, that the practice was very liberal, and persons were admitted to the bar with little knowledge of the law. Nor was it any better in the practice of the Supreme Court, when original applications were made to it. The general sentiment was that this was a new country of free and easy habits in social intercourse and business matters, and that it was right that every one who desired it should be allowed to try his hand at the law, unless there was some personal objection that unfitted him to appear in the bar of the court. The fact that the Supreme Court had fixed no standard on the subject,

and was extremely liberal in its practice, discouraged many District Judges from being as strict in the performance of their legal duty in the admission of applicants to the bar, as they otherwise would have been. Because, if a person was rejected by a District Judge, he might with but little additional preparation apply to the Supreme Court and be admitted. The consequence of this was that a great many persons entered upon the practice of the law who were not adequately prepared for it, and, though most of them soon passed out of notice, enough of them remain in the practice to lower the general standard of the profession, as exhibited from time to time in the courts of the State. This may not have been the worst consequence attending it, for litigants suffered from it. Good looks, sharpness and appearance were some times taken as evidence of good legal qualifications, and as it took time to remove the impression, pecuniary losses were incurred by blundering incompetency in the mean time. Besides this, the proceedings in the courts not unfrequently exhibited a gross want of legal capacity in the litigation of important interests, by which the rights of the people were jeopardized and sometimes lost. Frequent appeals were taken to the Supreme Court from a want of capacity to know that it would be a useless effort to relieve incompetency from its consequential errors.

The Supreme Court, to inaugurate a reform on this subject, at its session in 1858 or 1859, adopted a set of rules, in which it prescribed a list of law books upon which applicants for admission to the bar should be examined. The rule then adopted was the same as that contained in the rules of the Supreme Court, adopted during its session at Tyler, on the 1st day of December, 1877, published in Forty-seventh Texas Reports, page 636, which reads as follows, to wit: "Applicants for license, upon examination, will be expected to have studied Blackstone's Commentaries, Kent's Commentaries, Stephens, Gould or Chitty on Pleadings; First Greenleaf, Starkie or Philips, on Evidence; Story's Equity Pleadings; Parsons, Story or Chitty on Contracts; Story, Parsons or Daniels on Promissory Notes; Story or Gow on Partnership; Story's Equity Jurisprudence, or Adams's Equity, or law books of like character, and to have some general knowledge of the Constitution and Statutes of this state, and of the rules of the District and Supreme Courts."

Thus it will be seen that a standard was fixed embracing a knowledge of the common law and equity, and of our Constitution and Statutes, leaving the Constitution and laws of the United States, the law of nations and the Spanish civil law, so far as it enters into the rights of property in Texas, to be learned in the course of practice, as they might be practically required in attending to business in our Courts.

The effect of this was very soon seen, by the application and admission of persons much better qualified for the practice of law, which

has generally continued up to the present time, to the benefit of the country and of the legal profession.

In other States and countries, standards of education are prescribed as necessary to enter upon the study of the law; and such a length of time for the study of law has been made requisite for admission to the bar.

This is generally the case in much older countries than Texas, in which there are greater facilities for education than have heretofore existed in this State. Whatever standard of education or legal study, as to extent or time, may be found to be practical and beneficial at some further period of our history, it is not believed that any attempt to raise it now would be either practical or useful. If the rule prescribed by the Supreme Court is faithfully carried out, as it should be, the study required will ordinarily employ the student two years, and that, if he is diligent, ought to prepare him to be a beginner in the practice of law. It is true that more is required for graduation in the law school of the State University, which requires two years of study. There the student has the advantage of the daily instruction of teachers. Many a young man may be expected to make his mark at the bar and on the bench of Texas, who will not be able to receive the benefit of the University in obtaining a legal education. However desirable it may be for such a public institution to be encouraged and patronized, the time has not yet arrived that persons should be forced to go there by any standard that would make it necessary. Far better for the country will it be for the law department of that institution to exhibit its usefulness by the examination of its students in court for a license, and by the elementary learning that they may show in their practice they have acquired in the University.

A diploma from no school should ever be a passport into our courts for admission to the bar. If one should happen to have a diploma who cannot stand a creditable examination in court, as others do, who have no such paper evidence of qualification, it is better that it should go to the discredit of the school for having given it, than that unteachable dullness should be inflicted on the courts, by his admission to the bar.

In conclusion, it may be truly said that no class of men in England and America, during two hundred years past, has had more influence upon public affairs and upon proceedings in courts than have the members of the legal profession. It behooves them to maintain that elevated standing among men, now, and in the future. The means of doing it is in their own hands, by properly attending to their assigned duties in their examinations for admission to the bar, and by encouraging a laudable emulation, both in the ethics and legal learning of their profession.

REPORT OF THE  
COMMITTEE ON COMMERCIAL LAW

DELIVERED BY

HON. A. J. PEELER

BEFORE THE

TEXAS BAR ASSOCIATION.

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*To the President and Members of the Texas Bar Association:*

GENTLEMEN—Art. IV, of the Constitution of this Association, provides for a Committee on "Commercial Law," and Sec. 4, of Art. VI, of the By-Laws, declares, "It shall be the duty of the Committee on Commercial Law, to report the best means to produce uniformity in Commercial Law and usages."

Your Committee understand this as requiring them to point out defects in the Commercial Law in this State, and to suggest such remedies as may be accomplished through legislative enactments.

Treating, for the purposes of this report, the term "Commercial Law," as meaning practically the same thing as "Mercantile Law," it includes many of the most important subjects within the whole range of municipal law. It embraces shipping, insurance, mercantile paper or bills of exchange and promissory notes and other contracts which have the peculiar character of negotiability, contracts of sale, partnership, agency, bailments, assignments by insolvents, etc. A few of these subjects will be touched upon.

There is great need, in this State, for a carefully prepared insurance law. The subject has commended itself to the Legislatures of other States, as one of much consequence. Among the main features of such a law, the form of policies should be prescribed, and the character or *size of type* in which the policies, and especially the conditions, should be printed, should be stated. Without the aid of a microscope, one can scarcely read the numerous and complicated conditions now printed on or attached to the policies generally used.

Even the experienced lawyer will sometimes strain his eyes for an hour before finding in these finely printed conditions, a particular point, and then it will be so intermingled and obscured in a long sentence, that he will scarcely know it when he finds it. Without charging that this is intended to entrap the assured, who are often unacquainted with such matters, the fact is, it accomplishes this result, as will be seen from the thousands and rapidly multiplying insurance cases in the reports.

Nearly, if not all policies require proof of loss as a condition precedent to recovery by the assured. Our Supreme Court holds that the requirements of the policy in this respect, unless waived, must be complied with. (*East Texas Fire Insurance Company vs. Dyches*, 56 Texas, 565).

As to when, to whom and how this proof of loss is to be made, the policies used in this State are often widely variant. Some of them declare that the proof is to be made at the home office, which may be in New York, Boston or even Canada, and that the company is not to pay until from twenty to sixty or ninety days from the receipt of satisfactory proofs. Objections of a character so technical as even to shame a "Philadelphia lawyer" can be made from time to time to the proof presented until at last the assured, exasperated with repeated failures in trying to get it right, finds himself in a frame of mind to settle upon the best terms he can, rather than be kept out of his money during the progress of several years' expensive litigation.

That this picture is not over drawn can be seen from any digest of insurance decisions, where the cases touching defective proofs of loss can be counted by the hundreds. The law ought to be that every insurance company doing business in this State should have a local agent in each county where they transact business, to whom proofs of loss should be presented. The proofs should be sufficiently full to show that the assured has suffered an honest loss, and the extent thereof, and every facility should be furnished the company for inquiring into these matters. But all red tape requirements, such as no ordinary man can be expected to comply with and such as not only puzzle lawyers, but even insurance experts, should be disallowed. After the lapse of say twenty or thirty days from the time the local agent is given notice of the loss, the policy should be payable, and no defects in proof should avail as a defense where there is no question that the loss has been honestly sustained.

These suggestions are made in no unfriendly spirit to insurance companies, but they have found shape in the legislation of other States and cannot too soon receive the attention of our own legislature.

Another very important subject in which the commercial community of the State is very deeply interested, is a well prepared system regulating assignments by insolvent debtors. The importance of a

good assignment law is emphasized by the absence of a national bankrupt law. The only two laws we have upon the subject is the act of March 24, 1879, (App. R. S. 7) and the act of April 7, 1883, amendatory thereof. All intelligent judges and lawyers in this State, who have had occasion to pass upon or examine these acts, pronounce them very imperfect, incongruous and unsatisfactory pieces of legislation. Some, if not all, of the criticisms upon this law by the Circuit Court of the United States, in *Lawrence vs. Norton*, 22 Am. L. Reg. 258, are certainly just.

It seems almost out of the question to prepare an assignment which does not contain some sentence or word which provokes litigation to test its validity. A simple form of assignment could be prescribed. For instance: "I, Richard Roe, of Bexar county, Texas, do hereby grant, bargain, sell, convey, transfer and assign all my real and personal property mentioned and described in the schedules hereto annexed, marked "A," "B" and "C," (schedule "A" to contain real estate, schedule "B" to contain personal property, and schedule "C" to contain notes, accounts, and other choses in action), to John Doe, also of said county and State, to be held and disposed of by him for the benefit of all my creditors, (or of such of my creditors as may accept this assignment), according to the laws of Texas.

(Signed)

"RICHARD ROE."

The law should declare that an assignment made substantially in this form should operate to pass all the assignable property of the debtor, and if the assignor is really insolvent, or in contemplation of insolvency, it should not be attacked upon the ground of fraud, or upon any other ground which would defeat its taking effect.

The law should then make full provision for the administration of the assigned estate by the assignee. In other words, the rights of the creditors and the duties of the assignee should be clearly defined, and not left to conjecture.

Provision should also be made for a composition with creditors after assignment. Germain to this subject, reference should also be made to the attachment laws of this State, which are now frequently used to prefer some favorite creditor. The debtor, instead of making an assignment for the benefit of all his creditors, gets some creditor, who is afterwards to set him up in business, to attach. No ground of attachment may exist, but the particular creditor gets everything, and everybody else is left out in the cold.

The law ought to be that all attachments levied thirty days before the making of an assignment should be of no effect as a preference on the assigned estate. In other words, the policy of the law should be against preferences, and facilities should be afforded to all parties in interest to get rid of all devices intended to prevent a fair and equal distribution of all an insolvent's property among all his creditors.

It may not be amiss in this place, while speaking of attachments, to refer to a glaring defect in the law as it now stands. Where attached property is sold, and the proceeds are deposited in court, and the attachment afterwards quashed, it seems the money goes to the defendant in attachment. Instances have occurred where the defendant in attachment took the money, although before the attachment he had sold the property and claimed no interest therein; and the person to whom he sold the same sued the attaching creditor for the value thereof.

Another matter relating to the proceeds of sale might be remedied. The proceeds are, in all cases, to be deposited with the clerk, to be afterwards disposed of by the court, which may not meet for months, and there is no provision made by which they can be drawn out, even by the consent of all parties. The money, which sometimes amounts to thousands, instead of lying idle, perhaps in an insecure vault, should be withdrawn by consent, or by the parties who assert claim thereto, by giving a good bond.

Touching promissory notes, bills of exchange and other written contracts for the payment of money, a law declaring what should be deemed "negotiable paper" would serve a useful purpose. That which in the interest of the commercial community could be settled by a few lines of positive law should not be left to uncertainty, to be determined only by experiment and tedious litigation.

Some limitation should be imposed upon what are termed "iron-clad" notes, which authorize the entry of judgment by confession in any court in the State. Such notes are often instruments of extreme oppression, and are not unfrequently, by collusion between the debtor and creditor, designed to accomplish a fraudulent preference. If such notes are to be sustained, judgment thereon should only be rendered in the county of the debtor's residence, and with due regard to the publicity of the proceedings.

While a check should be afforded in this direction, on the other hand, no defense to a note, bill or other commercial paper should be allowed unless under oath. And where the party sued does not plead the non-execution of the paper, failure or partial failure of consideration, a set-off or some such defense, *under oath*, judgment should be taken upon the first calling of the docket. A demurrer or simple denial, as is now the case, should not be permitted to delay the rendition of judgment.

And what would be still better, if under our Constitution it can be accomplished, would be a law, with proper safeguards, authorizing the clerk, in vacation, to enter judgment in all such cases. This would relieve the dockets of many suits to which there is no defense, and enable creditors to enforce payment without the expense and delays to which they are now subjected.

PROCEEDINGS

OF THE

FOURTH ANNUAL SESSION

OF THE

TEXAS BAR ASSOCIATION

HELD IN THE

CITY OF AUSTIN, MAY 5 AND 6, 1885.

WITH THE

CONSTITUTION AND BY-LAWS,

ALSO,

OFFICERS, STANDING COMMITTEES AND ROLL OF MEMBERS

FOR THE YEAR 1885-86.

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AUSTIN:

PRINTED BY ORDER OF THE ASSOCIATION.

1885.



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These Proceedings are published by authority and distributed to members by the Association.

CHARLES S. MORSE, *Secretary*.

The Fifth Annual Session of the Association will be held in the City of Dallas, the second Tuesday in July, 1886.

# TEXAS BAR ASSOCIATION.

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## CONSTITUTION.

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### ARTICLE I.—NAME AND OBJECTS OF THE ASSOCIATION.

SECTION 1. This Association shall be called the TEXAS BAR ASSOCIATION.

SEC. 2. Its objects shall be to advance the science of jurisprudence, promote the uniformity of legislation in the administration of justice throughout the State, uphold the honor of the profession of the law, and encourage cordial intercourse among its members.

### ARTICLE II.—MEMBERSHIP.

SECTION 1. Any attorney of the Texas bar, in honorable standing, upon his written application, may be admitted to membership at any regular meeting of the Association. Said application must be indorsed by three members of the Association, and a fee of \$5 shall accompany the same—\$2 50 initiation fee, and \$2 50 annual dues.

SEC. 2. Such application shall be referred to the Board of Directors, who shall report the same to the Association; and if said report be favorable, a ballot shall be taken, and if four-fifths of the members voting shall be in favor of the applicant he shall be declared elected; and if he shall sign the Constitution and pay his admission fee within ten days after he shall be notified of his election, he shall be placed on the roll of members.

### ARTICLE III.—OFFICERS AND THEIR DUTIES.

SECTION 1. The officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, who shall be chosen by ballot at a regular meeting, by a majority of the members present and voting.

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SEC. 2. There shall be a Board of Directors, five in number, elected at the same time and in the same manner with the officers; and the President and Vice-President shall be ex-officio members of the Board.

SEC. 3. The officers and Directors shall hold their places for one year, and until their successors shall be elected; provided, that the same person shall not be elected President two years in succession.

SEC. 4. The duties of officers shall be such as usually devolve upon such positions, and may be regulated and prescribed from time to time by the Constitution, By-Laws or resolutions of the Association.

SEC. 5. The Board of Directors shall have exclusive authority, and shall exercise executive supervision over the affairs of the Association between its meetings.

SEC. 6. Vacancies in the offices and Board of Directors shall be filled by the Board, the concurrence of a majority of whom shall be necessary to a choice.

#### ARTICLE IV.—COMMITTEES.

SECTION 1. The following committees shall be appointed annually by the President for the year ensuing, and shall consist of five members each: On Jurisprudence and Law Reform, on Judicial Administration and Remedial Procedure, on Legal Education and Admission to the Bar, on Commercial Law, on Publication, on Grievances and Discipline.

SEC. 2. A Committee of three, of whom the Secretary shall always be one, shall be appointed by the President at each annual meeting of the Association, whose duty it shall be to report to the next meeting the names of all members who shall in the interval have died, with such notices of them as shall, in the discretion of the committee, be proper.

#### ARTICLE V.—GENERAL POWERS.

SECTION 1. This Association shall have power to impose fines, assess fees and establish by-laws for its government. It shall have power to remove officers, and suspend or expel members for good cause, upon written charges exhibited against him by a member, and due notice given him of the charges, and of the time they will be brought before the Association.

SEC. 2. The By-Laws shall prescribe the assessments to be levied on the members for the support of the Association and the promotion of its objects.

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ARTICLE VI.—QUORUM.

SECTION 1. Twenty-five members in regular standing shall constitute a quorum for the transaction of business.

## ARTICLE VII.—ANNUAL ADDRESS.

SECTION 1. The President shall open each meeting of the Association with an address, in which he shall communicate the noteworthy changes in statutory and constitutional law, and especially such changes as affect the development and progress of the law and the administration of justice.

## ARTICLE VIII.—MEETINGS.

SECTION 1. A majority of the members present at an annual meeting of this Association shall designate the time and place for holding the next annual meeting.

## ARTICLE IX.—AMENDMENTS.

SECTION 1. All propositions to alter, amend or add to this Constitution shall be made in writing at a meeting of the Association, and filed with the Secretary at least one month before being acted upon, and shall not be adopted without the concurrence of two-thirds of all the members present.

## ARTICLE X.—DUES.

SECTION 1. Each member of the Association shall pay to the Secretary the sum of \$2 50 as annual dues.

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BY-LAWS.

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## ARTICLE I.—PRESIDING OFFICERS.

SECTION 1. The President, and in his absence the Vice-President, shall preside at all meetings of the Association; if neither of these officers be present, a President pro tem. shall be chosen by and from the attending members.

## ARTICLE II.—ADDRESSES AND ESSAYS.

SECTION 1. The Board of Directors, at its first meeting after each annual meeting, shall select some person to make an address at the next annual meeting, and not exceeding six persons to read papers.

**ARTICLE III.—ANNUAL MEETINGS AND ORDER OF BUSINESS.**

**SECTION 1.** The order of exercises at the annual meetings shall be as follows :

1. Opening address of the President.
2. The nomination and election of members.
3. Report of the Board of Directors.
4. Election of the Board of Directors.
5. Reports of the Secretary and Treasurer.
6. Reports of Standing Committees, as follows : On Jurisprudence and Law Reform ; on Judicial Administration and Remedial Procedure ; on Legal Education and Admission to the Bar ; on Commercial Law ; on Publication ; on Grievances and Discipline.
7. Reports of special committees.
8. The nomination of officers.
9. Miscellaneous business.
10. The election of officers.
11. The annual address, to be delivered by the person selected by the Board of Directors, shall be made at the morning session of the second day of the annual meeting.

**SEC. 2.** This order of business may be changed at any meeting by a vote of a majority of the members present; and, except as otherwise provided by the Constitution or By-Laws, the usual parliamentary rules and orders will govern the proceedings.

**SEC. 3.** No person shall speak more than ten minutes at a time, nor more than twice on the same subject.

**SEC. 4.** A stenographer shall be employed at each annual meeting.

**SEC. 5.** Each county bar association may annually appoint delegates, not exceeding three in number, to the next meeting of the Association, and such delegates shall be entitled to all the privileges of membership at and during said meeting.

**SEC. 6.** All papers read before the Association shall be lodged with the Secretary. The annual address of the President, the reports of the committees and proceedings of the annual meetings shall be printed, but no other address made or paper read or presented shall be printed except by order of the Committee on Publication.

**ARTICLE IV.—MEMBERSHIP AND DUES.**

**SECTION 1.** The initiation fee to entitle a person to membership shall be \$5, which shall include the annual dues for the first year.

**SEC. 2.** The annual dues shall be payable at the annual meeting in advance, and should any member neglect to pay them for any year, at or before the next annual meeting, he shall cease to be a member.

The Secretary shall give notice of this By-Law, within sixty days after each meeting, to all members in default.

#### ARTICLE V.—OFFICERS AND COMMITTEES.

SECTION 1. The terms of office of all officers elected at the annual meeting shall commence at the adjournment thereof, except the Board of Directors, whose term of office shall commence immediately upon their election.

SEC. 2. The President shall appoint all committees, except the Committee on Publication, within thirty days after the annual meeting, and shall announce them to the Secretary, who shall promptly give notice to the person appointed. The Committee on Publication shall be appointed on the first day of each meeting.

SEC. 3. The Secretary's and Treasurer's reports shall be examined and audited by the Board of Directors before their presentation to the Association.

SEC. 4. The Board of Directors and all standing committees shall meet on the day preceding each annual meeting, at the place where the same is to be held, at such hour as their respective chairmen shall appoint, and should any member of any committee be absent, the vacancy may be filled by the members of the committee present.

SEC. 5. The Committee on Publication shall meet within one month after each annual meeting, at such time and place as the chairman shall appoint.

SEC. 6. Special meetings of any committee shall be held at such times and places as the chairman thereof may appoint; reasonable notice shall be given by him to each member by mail.

#### ARTICLE VI.—DUTIES OF COMMITTEES.

SECTION 1. It shall be the duty of the Committee on Jurisprudence and Law Reform to consider and report to the Association such amendments to the law as in its opinion should be adopted; also to scrutinize proposed changes in the law, and, when necessary, report upon the same.

SEC. 2. It shall be the duty of the Committee on Judicial Administration and Remedial Procedure to observe the practical workings of the judicial system of the State, and recommend by written or printed report, from time to time, any changes therein which observation or experience may suggest.

SEC. 3. It shall be the duty of the Committee on Legal Education and Admission to the Bar to report the most suitable means for promoting and facilitating the study of the law, and the necessity or

propriety of elevating the standard of qualifications for admission to the bar, and the best means for accomplishing that object.

SEC. 4. It shall be the duty of the Committee on Commercial Law to report the best means to produce uniformity in commercial law and usages.

• SEC. 5. The Committee on Publication shall pass upon and have printed all papers, should they deem them of sufficient importance, except as it is otherwise provided by the Constitution and By-Laws.

SEC. 6. The Committee on Grievances and Discipline shall report as to the best means of upholding the honor and dignity of the law in the professional intercourse among the members of this Association. All complaints against the members of this Association shall be presented to this committee, and if the committee shall be of the opinion that the matters alleged are of sufficient importance, they will determine upon the course of procedure for the trial of the same; and shall give notice to the party charged of the nature of the complaint and the time of the trial thereof by the Association, all of which the complainant shall also be notified of by the committee.

#### ARTICLE VII.—RESOLUTIONS.

SECTION 1. No resolution complimentary to any officer or member, for any service performed, paper read, or address delivered, shall be considered by this Association.

#### ARTICLE VIII.—AMENDMENTS.

SECTION 1. These By-Laws may be amended at any meeting of the Association, by a vote of two-thirds of those present, provided that a copy of the proposed amendment shall have been filed with the Secretary on or before the first day of such annual meeting.

PROCEEDINGS  
OF THE  
FOURTH ANNUAL SESSION  
OF THE  
TEXAS BAR ASSOCIATION  
HELD IN THE  
CITY OF AUSTIN, MAY 5, 1885.

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*FIRST DAY*—MORNING SESSION.

AUSTIN, TEXAS, May 5, 1885.

The Association was called to order by the Vice-President, Hon. A. J. PEELER, who stated to the Association that the President, Hon. B. H. BASSETT, was lying ill at home in Brenham and was unable to attend the meeting.

The following officers were present :

Hon. A. J. PEELER, Vice-President.

ROBERT G. WEST, Treasurer.

CHAS. S. MORSE, Secretary.

The Secretary proceeded to call the roll, and it being evident there was more than a quorum present, on motion the call was suspended.

The Vice-President then read the address—chiefly upon the noteworthy changes in the civil law as made by the last Legislature. [See appendix.]

The regular order of business was then taken up and a new Board of Directors for the ensuing year was elected, as follows :



HON. A. W. TERRELL, Austin; JOHN B. RECTOR, Austin; F. H. PRENDERGAST, Franklin; C. C. GARRETT, Brenham; J. H. McLEARY, San Antonio.

The following applications for membership were presented and referred to the Board of Directors:

JOHN HANCOCK, A. H. GRAHAM, J. S. WOODS, W. F. MOORE, T. A. THOMPSON, J. P. C. WHITEHEAD.

The Board of Directors made the following report:

*To the President and Members of the Texas Bar Association:*

GENTLEMEN—The Board of Directors, to whom was referred the six applications for membership, having carefully considered the same, would report favorably on each of said applications and recommend that the applicants be elected.

Respectfully submitted,

A. W. TERRELL,  
Chairman of Committee.

A ballot was then taken and the applicants were unanimously elected.

On motion, the committee of three, consisting of O. M. ROBERTS, JOHN A. GREEN and B. H. BASSETT, appointed at the last meeting to prepare a draft of an amendment to the Judiciary Article of the State Constitution, were granted until the next annual meeting to prepare and present the report, and the following gentlemen were added to the committee: HON. Z. T. ADAMS, JOHN HANCOCK, ROBT. S. GOULD, JOHN S. WOODS, I. N. ROACH and JOHN B. RECTOR.

Hon. O. M. ROBERTS, chairman of said committee, moved that the committee be required to meet, at some point to be hereafter designated, at least two months before the next annual meeting of the Association and, after having agreed on the amendment to be proposed, that the same be printed at the expense of the Association and distributed to the legal profession throughout the State, in order that the members may be prepared to intelligently

discuss the amendment at the next meeting. Each member of the committee present promised to be in attendance, and the motion carried unanimously.

The President announced the intention of the Austin Bar to banquet the members of the Association on Wednesday night, and invited all present to be in attendance.

On motion the Association adjourned until to-morrow at 10 o'clock.

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## SECOND DAY—MORNING SESSION.

WEDNESDAY MORNING, May 6, 1885.

The Association was called to order by Hon. A. J. PEELER, Vice-President.

The Secretary read the minutes of yesterday's session, which were adopted.

The following applications for membership were presented and referred to the Board of Directors:

W. D. WILLIAMS, OSCEOLA ARCHER, R. L. BROWN and JOE H. STEWART.

F. H. PRENDERGAST, a member of the Committee on Jurisprudence and Law Reform, made the following individual report, which, coming before the Association, was considered and acted upon as the report of the committee:

*To the President and Members of the Texas Bar Association:*

GENTLEMEN—There being no other member of the Committee (of five) on Jurisprudence and Law Reform present, I present my individual views on the questions which I think the committee should consider, viz.:

1. I think the law should be so changed that when a case is appealed and reversed, the Clerk of the Supreme Court should be required to issue mandate and copy of opinion, at least on request of appellant, whether the costs have been paid or not. The present law makes a hardship. I sue for a tract of land—judgment for defendant;

I appeal, and judgment reversed at the costs of an insolvent appellee, and am compelled to pay \$60 or \$100 costs to get a new trial. The State should relieve litigants of the expense of correcting the erroneous judgment of the judges.

2. As the law now is, the Supreme Court, where a case has been tried by a judge and no jury, will reverse or affirm a case upon a consideration of the evidence legally admissible. These cases should be tried in the Supreme Court by the same rule as other cases. Some evidence is legal unless objected to; but why object, when your objection, if overruled, will not be decided on appeal?

3. Chapter 1, Article 12, of Criminal Procedure, provides for inquiries as to insanity of a defendant after conviction; there seems to be no provision for trying this question before conviction. Article 723, Criminal Procedure, contemplates a separate chapter, and refers to Chapter 2, Title 12; and Chapter 2, Title 12, is on a different subject. Article 39, of the Criminal Code, provides that no person shall be tried when he is insane. There should be a plain direction as to inquiring into the question when it is claimed that a person has become insane since the commission of an act.

4. There was a law pretty thoroughly discussed at the two last sessions of the Legislature, providing for the pro rata distribution of the property of a debtor when an attachment has been levied on his property. The enactment of such a law is an innovation upon a rule of procedure of such long standing that it has almost become a rule of right, and should be acceded to upon great caution. The attaching creditor should receive the benefit of his diligence and pay the penalty of his rashness. If a pro rata distribution is desirable, the creditor so desiring should take the initiative by direct proceeding for that purpose.

5. The law regulating the taking of depositions should be further extended, so that the parties to a suit may appear before the officers and propound oral questions to the witness without being compelled in all cases to file written questions.

6. Claimant should be permitted to prove the execution of a deed by any person, without the necessity of calling or accounting for the subscribing witnesses, and the principle of *White vs. Holiday*, 20 Texas, 682, should govern all cases, without the restrictions on it imposed by the cases, *Samples vs. Erwin*, 45 Texas, 573, and *Wiggins vs. Fleishel*, 50 Texas, 63. Practically subscribing attests nothing but the grantor's signature.

7. During the trial of the right of property, the parties should be compelled to plead as in other cases.

8. The grand jury should have a clerk to take down the substance of testimony, which should become a record.

Respectfully submitted,

F. H. PRENDERGAST.

The adoption of the above report being under discussion, Hon. T. S. MAXEY offered the following :

When the mandate shall be procured within less than twenty days before the next ensuing session of the trial court, the cause shall be continued for such term by operation of law, unless the parties otherwise agree.

Hon. O. M. ROBERTS moved that a committee of five be appointed to whom shall be referred all matters pertaining to the subject matter contained in the report of Hon. F. H. PRENDERGAST.

Motion prevailed, and the President appointed the following as said committee :

Hon. O. M. ROBERTS, T. S. MAXEY, JOHN A. GREEN, J. O. TERRELL and C. C. GARRETT.

Hon. ROBERT S. GOULD, of the Committee on Legal Education and Admission to the Bar, presented the following report :

*To the President and Members of the Texas Bar Association :*

The undersigned, being those members of the Committee on Legal Education and Admission to the Bar who are present, have to report that various causes have combined to prevent any meeting of the committee, and that consequently they are not prepared to recommend any measures looking to the promotion of legal education or the elevation of the standard of qualification for admission to the bar for the adoption of the Association.

They are impressed with the belief that the main duty of such a committee is to collect information bearing on the subjects falling within their province, and as they have had no opportunity to do this they respectfully ask that they be excused from making any further report at this time.

Respectfully submitted,

ROBERT S. GOULD,  
A. T. WATTS,  
T. S. MAXEY.

Hon. C. C. GARRETT, for the Committee on Publication, made the following report :

*To the Hon. A. J. Peeler, President of the State Bar Association :*

The Committee on Publication would respectfully report that they

have caused the minutes of the last session at San Antonio to be published, and to be included therein the following papers, to-wit: 1. Annual address of the President, Hon. J. H. McLeary; 2. Annual address of Hon. B. H. Bassett, appointed orator; 3. Report of Hon. O. M. Roberts, chairman of Committee on Legal Education and Admission to the Bar; 4. Report of Hon. A. J. Peeler, Committee on Commercial Law; and that they have approved the bill of W. H. Coyle, publisher, for the sum of \$140 for printing the same.

Respectfully submitted,

C. C. GARRETT,  
A. M. JACKSON, JR.,  
For the Committee.

The Board of Directors made the following report :

*To the President and Members of the Texas Bar Association :*

GENTLEMEN—We have examined the applications for membership of W. D. Williams, Osceola Archer, John S. Givens, R. L. Brown, Joe H. Stewart and D. G. Wooten, and report favorably thereon, and recommend that the applicants be elected.

Respectfully submitted,

A. W. TERRELL,  
Chairman Board of Directors.

On motion, the report was received, the ballot spread and each candidate was declared unanimously elected.

The Secretary's report, having been referred to the Board of Directors, was read, and is as follows :

#### Secretary's Report.

*To the President and Members of the Texas Bar Association :*

GENTLEMEN—Herewith I submit for your inspection my annual report as Secretary of this Association.

I have received since our fourth annual meeting, held in San Antonio in November last—

Annual dues from 77 members at \$2 50 each.....	\$192 50
From 19 new members for initiation fees at \$2 50 each.....	47 50

Making a total of.....	\$240 00
I had in my hands, as per last report, the sum of.....	73 82

Making a total of.....	\$316 50
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The expenses of this office have been as follows:

The printed proceedings of last annual session.....	\$140 00
For local notices in San Antonio Express.....	2 20
For two notices of called meeting in Statesman.....	4 40
For printing circulars, envelopes, etc.....	13 55
For 750 postal cards, two notices.....	7 50
For postage—sending out proceedings.....	15 50
Express on proceedings from Houston.....	3 10
Express on packages sent out.....	5 00
Postage for sending out circulars.....	6 00
Salary of Secretary to date.....	53 33

Total expenses..... \$250 58

Leaving a balance now in my hands of..... 65 92

By the above report it will be seen that I have neither deposited nor drawn any money from the hands of our Treasurer, who has on hand the amount as stated in the last report of our ex-Treasurer, viz: \$361 35.

I have been trying to make the collections meet the necessary current expenses of the Association, without drawing on the original fund in the treasury.

The roll of the Association foots up 355 members, 278 of whom are still in arrears for dues for 1885. During the present year, and certainly before our next annual session, it is expected that these members so in arrears, will either pay up their dues or notify the Secretary of their intention not to pay them, and request him to blot their name from among the members of the Texas Bar Association.

Respectfully submitted,

CHAS. S. MORSE, Secretary.

### Treasurer's Report.

*To the President and Members of the Texas Bar Association:*

GENTLEMEN—I have in my hands \$361 35, the amount turned over to me by my predecessor. I have had no warrants drawn on this fund presented to me since our last meeting.

Respectfully submitted,

ROBERT G. WEST, Treasurer.

### Board of Directors' Report.

*Hon. A. J. Peeler, Vice-President of State Bar Association:*

Your Board of Directors have examined the report and accounts of Charles S. Morse, Secretary of the Association, which is herewith submitted to you as approved by your committee. It shows a balance of \$69 92 in his hands.

There is in the hands of the Treasurer the sum of \$361 35, as per his report, which we have also examined.

Respectfully submitted.

A. W. TERRELL,  
For the Board of Directors.

The following amendments having been proposed at the last meeting, were read, and, on motion, unanimously adopted :

**Amendment to Constitution.**

*Resolved*, That Section 1, of Article II, of the Constitution, be amended so as hereafter to read as follows :

SECTION 1. Any attorney of the Texas bar in honorable standing, upon his written application, may be admitted to membership at any regular meeting of the Association. Said application must be endorsed by three members of the Association, and a fee of \$5 00 shall accompany the same ; \$2 50 initiation fee, and \$2 50 annual dues.

**Amendment to By-Laws.**

*Resolved*, That the By-Laws of this Association be amended by adding thereto after Article VI the following :

**ARTICLE VII—RESOLUTIONS.**

SECTION 1. No resolution complimentary to any officer or member, for any service performed, paper read, or address delivered, shall be considered by this Association.

The applications of Z. T. FULMORE, W. J. BAILEY and JOHN DOWELL were received and referred to the Board of Directors, and having been reported upon favorably, the applicants were ballotted for and unanimously elected.

The next regular order of business being the selection of the time and place for holding the next annual meeting, Hon. J. O. TERRELL moved that the next meeting of this Association be held in the city of Dallas on the first Tuesday in July, 1886.

Hon. JOHN HANCOCK moved to amend by inserting the first Tuesday in June.

Hon. R. S. GOULD amended by proposing that the meeting be held in the city of Lampasas on the second Tuesday in July, 1886.

A division of the question was called for, and Dallas was selected as the place, and the second Tuesday in July as the time, for holding the next annual meeting.

An election of officers for the ensuing year was then had, which resulted in the election of the following :

Hon. A. J. PEELER, of Austin, President.

Hon. W. L. CRAWFORD, of Dallas, Vice-President.

Hon. R. G. WEST, of Austin, Treasurer.

CHARLES S. MORSE, Secretary.

The following were elected delegates to the National Bar Association :

Hon. A. W. TERRELL, W. P. BALLINGER, W. H. POPE, F. H. PRENDERGAST, JACOB WAELDER, Z. T. ADAMS and N. W. FINLEY.

The President appointed the following as the Committee on Publication :

DUDLEY G. WOOTEN, C. C. GARRETT, T. S. MAXEY, OSCAR BERGSTROM and G. B. WILLETT.

The constitutional amendment proposed by the Hon. D. P. MARR at the last annual meeting was adopted ; so that Sections 1 and 3 of Article III, of the Constitution, shall hereafter read as follows, to-wit :

SECTION 1. The officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, who shall be chosen by ballot, at the annual meeting, by a majority of the members present and voting ; *Provided*, that if only one candidate shall be before the Association to be voted for, for any one office, the rules may be suspended and the election of such officer be made by a *viva voce* vote.

SECTION 3. The officers and directors shall hold their places for one year, or until their successors shall be elected ; *Provided*, that no person shall be elected President twice in succession.

Hon. O. M. ROBERTS offered the following amendment to the Constitution, which, under the rules, was laid over until the next annual meeting :



*Be it resolved*, That Article VIII of the Constitution be so amended as to hereafter read as follows, to-wit :

SECTION 1. After the regular meeting of this Association, A. D. 1886, it shall meet annually thereafter in the city of Lampasas, Texas, on the second Tuesday in July of each succeeding year.

The Special Committee appointed this morning made the following report :

*Hon. A. J. Peeler, Vice-President of the Texas Bar Association :*

Your special committee, to whom was referred certain resolutions touching the issuance of mandates in civil causes, beg leave to report that, owing to the importance of the question at issue and the limited time they have had for investigation, they are unable to make a proper report at the present session of the Association, and therefore recommend that this matter be referred to the Committee on Jurisprudence and Law Reform for their report thereon at the next meeting of this body, and suggest for the consideration of said committee the following points :

1. When and under what restrictions, if any, should a mandate issue?
2. Shall the clerk be required to issue the mandate without prepayment of costs?
3. Upon the filing the mandate in the trial court, in causes requiring a new trial, shall the adverse party be entitled to notice of such filing? If yea, what notice shall be necessary?
4. Shall there be a time limited within which the mandate may issue? If so, what limit should be imposed?

Respectfully submitted,

O. M. ROBERTS,  
JOHN A. GREEN,  
T. S. MAXEY,  
J. O. TERRELL,  
C. C. GARRETT,  
Committee.

Vice-President W. L. CRAWFORD in the chair.

The Board of Directors made the following special report:.

*To Hon. W. L. Crawford, Vice-President :*

Your Board of Directors having considered the applications for membership of L. J. Storey, F. G. Morris, Thomas McNeal and R. C.

Walker, most respectfully report favorably thereon, and recommend that the applicants be duly elected.

Respectfully submitted,

F. H. PRENDERGAST,

C. C. GARRETT,

For Board of Directors.

On motion, the report was received, the ballot spread, and the applicants elected unanimously.

Hon. JOHN YOUNG GOOCH, Chairman of the Committee on Jurisprudence and Law Reform, having arrived, read the report of the committee [see Appendix], which was received and referred, under the resolution previously adopted, to the Special Committee of Nine on Constitutional Amendments, to be reported on at the next annual meeting.

Hon. JOHN A. GREEN, a member of the special committee appointed at the last meeting to prepare a draft of an amendment to the Judiciary Article of the State Constitution, at the request of the Association, read the following as his individual report [see Appendix], which was referred to the Special Committee on Constitutional Amendments, to be by them considered and reported on at the next annual meeting.

Hon. O. M. ROBERTS and A. J. PEELER being called upon, addressed the Association, each giving his views as to changes necessary to be made to the Judiciary Article of the State Constitution.

Addresses were also delivered by Vice-President W. L. CRAWFORD, Hon. JOHN YOUNG GOOCH and G. B. WILLET, on the same subject, at the close of which, and on motion of Hon. JOHN A. GREEN, the Association adjourned, to meet again in the city of Dallas, on the first Tuesday in July, A. D. 1886.

CHARLES S. MORSE,

*Secretary.*

# THE BANQUET

## COMPLIMENTARY TO THE TEXAS BAR ASSOCIATION

GIVEN UNDER THE AUSPICES OF THE AUSTIN BAR.

### TOASTS.

1. THE STATE OF TEXAS:  
Responded to by Governor JOHN IRELAND.
2. THE TEXAS BAR ASSOCIATION:  
Responded to by the President, Hon. A. J. PEELER.
3. OUR SUPREME COURT:  
Responded to by Chief-Justice A. H. WILLIE.
4. A BLENDED SYSTEM OF LAW AND EQUITY:  
Responded to by Hon. C. C. GARRETT.
5. OUR COMMISSIONERS OF APPEALS, from whom we part with regret, trusting the separation will be but temporary:  
Responded to by Judge W. S. DELANY.
6. THE SADDLE-BAG LAWYER:  
Responded to by ex-Governor O. M. ROBERTS.
7. TEXAS LAWYERS OF THE DAY:  
Responded to by Hon. JOHN S. WOODS.
8. LAWYERS AS LEGISLATORS:  
Responded to by Senator J. O. TERRELL.
9. THE MUCH-ABUSED CRIMINAL LAWYER:  
Responded to by Vice-President W. L. CRAWFORD.
10. THE LAWYER AS AN OFFICE-SEEKER:  
Responded to by Hon. J. P. C. WHITEHEAD.
11. LADIES AS CLIENTS AND LITIGANTS:  
Responded to by Hon. JOHN S. GIVENS.
12. OUR CLIENTS—MAY THEY MULTIPLY AND PROSPER:  
Responded to by Hon. JOHN YOUNG GOOCH.
13. THE LAW DEPARTMENT OF THE UNIVERSITY OF TEXAS:  
Responded to by YANCY LEWIS, Esq., of Gonzales.
14. THE PRESS OF TEXAS:  
Responded to by W. A. BOWEN, Esq.

# OFFICERS AND COMMITTEES.

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A. J. PEELER.....	<i>President.</i> .....	Austin.
W. L. CRAWFORD.....	<i>Vice President.</i> .....	Dallas.
CHAS. S. MORSE.....	<i>Secretary.</i> .....	Austin.
ROBT. G. WEST.....	<i>Treasurer.</i> .....	Austin.

## DIRECTORS.

A. W. Terrell.....	Austin.
C. C. Garrett.....	Brenham.
F. H. Prendergast.....	Franklin.
J. H. McLeary.....	San Antonio.
John B. Rector.....	Austin.

### *Committee on Jurisprudence and Law Reform.*

F. H. Prendergast.....	Franklin.
E. J. Simkins.....	Corsicana.
E. G. Bower.....	Dallas.
H. O. Head.....	Sherman.
N. W. Finley.....	Tyler.

### *Committee on Judicial Administration and Remedial Procedure.*

T. S. Maxey.....	Austin.
Oscar Bergstrom.....	San Antonio.
A. M. Carter.....	Fort Worth.
John S. Woods.....	Kaufman.
W. L. Davidson.....	Richmond.

### *Committee on Legal Education and Admission to the Bar.*

Robt. S. Gould, sr.....	Austin.
William Aubrey.....	San Antonio.
J. O. Terrell.....	Terrell.
John W. Robertson.....	Austin.
James Masterson.....	Houston.

### *Committee on Commercial Law.*

Richard Morgan, jr.....	Dallas.
A. Pope.....	Marshall.
L. C. Grothaus.....	San Antonio.
Wm. L. Prather.....	Waco.
J. Z. H. Scott.....	Galveston.

*Committee on Grievances and Discipline.*

John Young Gooch.....	Palestine.
E. J. Simkins.....	Corsicana.
John E. McComb.....	Montgomery.
Tillman Smith.....	Cleburne.
Anson Rainey.....	Waxahachie.

*Committee of Three on Deceased Members.*

J. Y. Hogsett.....	Fort Worth.
W. N. Shaw.....	Houston.
Chas. S. Morse, Secretary.....	Austin.

*Special Committee on Amendment to the Judiciary Article of the State Constitution.*

O. M. Roberts.....	Austin.
B. H. Bassett.....	Brenham.
John A. Green.....	San Antonio.
Z. T. Adams.....	Kaufman.
John Hancock.....	Austin.
John S. Woods.....	Kaufman.
I. N. Roach.....	Weatherford.
Robt. S. Gould, sr.....	Austin.
John B. Rector.....	Austin.

*Committee on Publication.*

Dudley G. Wooten.....	Austin.
C. C. Garrett.....	Brenham.
T. S. Maxey.....	Austin.
Oscar Bergstrom.....	San Antonio.
G. Bee Willett.....	Austin.

*Delegates to National Bar Association.*

A. W. Terrell.....	Austin.
W. P. Ballinger.....	Galveston.
W. H. Pope.....	Marshall.
F. H. Prendergast.....	Franklin.
Jacob Waelder.....	San Antonio.
Z. T. Adams.....	Kaufman.
N. W. Finley.....	Tyler.

[NOTE.—The President of the Association desires that the Chairman of each committee put himself in communication at once with each member of his committee, and that each committee begin without delay to prepare the material for a report. The selection of the committees has been made with the expectation and belief that each member of each committee will not only discharge the full measure of his duty in making a report, but that he will be personally present at the next annual meeting.]

# ROLL OF MEMBERS.

Abbott, Jo.....	Hillsboro	Chesley, A.....	Bellville
Acker, Walter.....	Lampasas	Clark, George.....	Waco
Adams, Z. T.....	Kaufman	Cleveland, C. L.....	Galveston
Alexander, L. C.....	Waco	Coffee, John T.....	Georgetown
Allen, W. H.....	Terrell	Copeland, John H. ....	San Antonio
Anderson, James M. ....	Waco	Crain, W. H.....	Hallettsville
Andrews, A. W.....	Terrell	Crank, W. H.....	Houston
Angel, H. P.....	Galveston	Crawford, W. L.....	Dallas
Antony, E. L.....	Rockdale	Croft, William.....	Corsicana
Archer, Osceola.....	Austin	Croom, J. L., jr.....	Matagorda
Atkinson, W. M.....	Gonzales	Culberson, Chas. A.....	Jefferson
Austin, William T.....	Galveston		
Aubrey, Wm.....	San Antonio	Davidson, R. V.....	Galveston
Autry, James L.....	Corsicana	Davidson, W. L.....	Richmond
		Davis, George W.....	Galveston
Ballinger, W. P.....	Galveston	DeBerry, A. W.....	Cleburne
Baker, James A., sr.....	Houston	Delany, W. S.....	Columbus
Baker, James A., jr.....	Houston	Dennis, Isaac N.....	Wharton
Bailey, W. J.....	Fort Worth	Denson, W. B.....	Galveston
Ball, R. L.....	Colorado	Devine, Thomas J. ....	San Antonio
Barry, B. T.....	Corsicana	Dickinson, E. C.....	Rusk
Bassett, B. H.....	Brenham	Douglass, W. L.....	Beaumont
Battle, N. W.....	Waco	Dowell, John.....	Austin
Beale, R. C.....	Corsicana	Drought, H. P.....	San Antonio
Bell, C. K.....	Hamilton		
Bergstrom O.....	San Antonio	Eaton, O. S.....	Galveston
Blair, T. A.....	Waco	Edmonds, Elias.....	LaSalle
Blake, S. R.....	Bellville	Edmundson, C.....	Austin
Blanding, J. M.....	Corsicana	Elgin, John E.....	Waco
Botts, W. B.....	Houston	Evans, Chas I.....	Abilene
Bower, E. G.....	Dallas		
Bradley, L. D.....	Fairfield	Farrar, L. J.....	Groesbeeck
Bright, W. R.....	Corsicana	Field, A. H.....	Dallas
Bringhurst, W. L.....	Marshall	Finlay, Geo. P.....	Galveston
Brown, T. J.....	Sherman	Finlay, O. E.....	Graham
Brown, J. W.....	Cleburne	Finley, N. W.....	Tyler
Brown, R. L.....	Austin	Finley, Howard.....	Galveston
Buetell, A. B.....	Galveston	Fisher, A. S.....	Georgetown
Burgess, W. H.....	Seguin	Fisher, Sam R.....	Austin
Burts, James H.....	Austin	Flournoy, W. M.....	Waco
		Fly, W. S.....	Gonzales
Callaghan, Bryan.....	San Antonio	Foard, R. L.....	Columbus
Call, E. O.....	Hillsboro	Fontaine, Sidney T.....	Galveston
Campbell, A. R.....	Galveston	Ford, T. W.....	Jasper
Carrington, W. A.....	Houston	Franklin, Joseph.....	Galveston
Carroll, J. A.....	Denton	Franklin, R. M.....	Galveston
Carraway, T. J.....	Jasper	Franklin, Thos. H.....	San Marcos
Carr, J. S.....	San Antonio	Freeman, G. R.....	Hamilton
Carter, A. M.....	Fort Worth	Frost, Sam R.....	Corsicana
Carter, Champe.....	Calvert	Fulmore, Z. T.....	Austin
Charlton, Wm.....	Kaufman	Fulton, Marshall.....	Denton

Gaines, W. P.	Austin	Ivy, V. H.	Hillsboro
Gammage, T. T.	Palestine	Jack, D. M.	Galveston
Gardner, B. H.	Fairfield	Jackson, A. M., sr.	Austin
Garnett, M. W.	Houston	Jackson, A. M., jr.	Austin
Garrett, C. C.	Brenham	Jackson, Hugh	Wallisville
Garrett, N. P.	Cameron	Jerdoue, W. M.	Galveston
Garrison, James L.	Henderson	John, A. S.	Beaumont
Gibbs, B.	Dallas	Johnson, T. L.	Seguin
Gibson, James P.	Rusk	Johnston, W. M.	Centreville
Givens, John S.	Corpus Christi	Jones, S. W.	Galveston
Goldthwaite, Geo.	Houston	Jones, C. Anson.	Houston
Gooch, John Y.	Palestine	Jordan, C. W.	Cleburne
Goodrich, L. W.	Marlin	Joseph, Thomas M.	Galveston
Gordon, John A.	Decatur	Keaghey, John S.	Jasper
Gould, R. S., sr.	Austin	Kennard, John R.	Anderson
Gould, R. S., jr.	Bryan	Kirk, Lafayette	Brenham
Grace, Charles D.	Bonham	Kirven, O. C.	Fairfield
Graham, A. H.	Austin	Kittrell, N. G.	Centreville
Graham, W. J.	Henderson	Kleberg, M. E.	Galveston
Green, John A.	San Antonio	Kleberg, Rudolph.	Cuero
Green, N. O.	San Antonio	Kllen, H.	Houston
Greer, H. W.	Corsicana	Kone, Ed. R.	San Marcos
Gresham, Walter	Galveston	Labatt, H. J.	Galveston
Grigsby, W. H.	Montague	Lamont, Alex.	Austin
Grimes, S. F.	Cuero	Lane, E. R.	Austin
Grothaus, L. C.	San Antonio	Lane, John	LaGrange
Guinn, R. H.	Rusk	Lea, James V.	Cold Springs
Gurley, E. J.	Marlin	Ledbetter, W. H.	LaGrange
Haggerty, J. J.	Bellville	Lee, John D.	Corsicana
Haldusek, A.	LaGrange	Leopold, Louis.	Galveston
Hamblen, E. P.	Houston	Lessing, W. H.	Ben Ficklin
Hamblen, W. P.	Houston	Levi, L.	Galveston
Hancock, John.	Austin	Lewis, Everett.	Gonzales
Hanscomb, S. S.	Galveston	Lightfoot, H. W.	Paris
Harcourt, John T.	Galveston	Lockett, C. C.	Caldwell
Hardy, Rufus.	Corsicana	Logue, L. J.	Columbus
Hare, Silas.	Sherman	Looney, F. B.	Butler
Harris, A. J.	Belton	Looscan, M.	Houston
Harrison, R. H.	Waco	Lott, E. H.	Cameron
Harwood, T. M.	Gonzales	Lovejoy, John.	Galveston
Harwood, T. F.	Gonzales	Lumpkin, S. H.	Meridian
Head, H. O.	Sherman	Lyle, Richa d.	Belton
Hefley, W. T.	Cameron	Mann, George E.	Galveston
Henderson, T. S.	Cameron	Mann, H. K.	Galveston
Herring, M. D.	Waco	Mantooth, Edwin J.	Homer
Hill, George L.	Marshall	Marr, D. P.	Pearsall
Hogan, W. A.	Indianola	Martin, Thomas P.	Fort Worth
Hogsett, J. Y.	Fort Worth	Masterson, B. T.	Galveston
Holmes, H. M.	Mason	Masterson, James.	Houston
Houston, A. W.	San Antonio	Mason, George.	Galveston
Houston, Reagan.	San Antonio	Mason, J. R.	San Antonio
Howard, Russell.	San Antonio	Matlock, A. L.	Montague
Hume, F. Charles	Galveston		
Hurt, J. M.	Dallas		

Mayfield, C. H.	San Antonio	Rainey, Anson.	Waxahachie
Maxey, T. S.	Austin	Randle, E. B.	Brenham
Maxey, J. M.	Meridian	Read, F. N.	Corsicana
McCampbell, John S.	Corpus Christi	Rector, John B.	Austin
McComb, John E.	Montgomery	Rector, N. A.	Giddings
McCormick, George	Columbus	Reese, T. S.	Hempstead
McCoy, John C.	Dallas	Rhodes, H. W.	Galveston
McFarland, J. B.	Brenham	Roach, I. N.	Weatherford
McKay, H.	Jefferson	Roberts, J. C.	Fairfield
McKie, W. J.	Corsicana	Roberts, O. M.	Austin
McKinnon, A. P.	Hillsboro	Robertson, John W.	Austin
McKinnon, Neill L.	Schulenberg	Robertson, H. G.	Tyler
McLeary, J. H.	San Antonio	Robinson, C. S.	Terre l
McLemore, M. C.	Galveston	Robson, W. S.	LaGrange
McNeal, Thomas.	Luling	Rogers, R. E.	Fort Worth
Meade, G. P.	Henrietta	Rose, Forster.	Galveston
Melven, H. S.	Seymour	Rucker, W. P.	Belton
Mills, A. M.	Galveston	Russell, L. B.	Refugio
Miller, James F.	Gonzales	Russell, T. J.	Beaumont
Minor, F. D.	Galveston		
Mitchell, J. M.	Houston	Sampson, Alex.	Galveston
Moore, John W.	Albany	Saunders, X. B.	Belton
Moore, W. F.	Austin	Sayers, J. D.	Bastrop
Morgan, Richard, jr.	Dallas	Sayles, John.	Brenham
Morris, F. G.	Austin	Sayles, Henry.	Galveston
Mott, M. F.	Galveston	Scott, J. Z. H.	Galveston
Murphy, J. R.	Corpus Christi	Scott, B. R. A.	Galveston
		Scott D. H.	Paris
Neblett, R. S.	Corsicana	Searcy, I. G.	Austin
Newton, S. G.	San Antonio	Searcy, W. W.	Brenham
Noble, S. B.	Galveston	Sexton, Frank B.	Marshall
		Shaw, W. N.	Houston
Oatis, M. A.	Cleburne	Sheeks, James D.	Austin
Oliver, W. C.	Houston	Shelley, N. G.	Austin
O'Brien, Geo. W.	Beaumont	Shepard, Seth	Galveston
O'Neil, J. M.	Decatur	Showalter, W.	Laredo
Osche, J. E.	San Antonio	Shropshire, E. L.	Comanche
Owsley, Alvin C.	Denton	Shropshire, B. D.	Comanche
		Simpkins, E. J.	Corsicana
Paine, T. J.	LaGrange	Simpkins, W. S.	Dallas
Paschal, George.	San Antonio	Simpson, Isaac P.	San Antonio
Pearson, P. E.	Richmond	Simpson, French.	Columbus
Peck, L. L.	Fairfield	Simpson, J. B.	Dallas
Peeler, A. J.	Austin	Sims, M. L.	Clarksville
Phelps, R. H.	LaGrange	Sinks, Ed. R.	Giddings
Ponton, T. J.	Gonzales	Smith, Tilman.	Cleburne
Pope, A.	Marshall	Smith, Geo. W.	Colorado
Pope, W. H.	Marshall	Smith, J. P.	Fort Worth
Porter, R. L.	Greenville	Solomon, E. E.	Wallisville
Prather, William L.	Waco	Sorley, William.	Fort Worth
Prendergast, H. D.	Austin	Sparkman, L. C.	Decatur
Pendergast, F. H.	Franklin	Spencer, F. M.	Galveston
Priest, M. D.	Fort Worth	Spivy, W. W.	Henderson
Proctor, D. C.	Cuero	Spooner, T. H.	Gonzales
		Stayton, John W.	Victoria
Quinan, George	Wharton	Stayton, Robert W.	Victoria



Steadman, William.....	Marshall	Waeider, Jacob.....	San Antonio
Stephens, John H.....	Montague	Walker, A. S.....	Austin
Stewart, Joe H.....	Austin	Walker, John C.....	Galveston
Stockdale, F. S.....	Cuero	Walker, Richard S.....	Nacogdoches
Storey, L. J.....	Lockhart	Walker, R. C.....	Austin
Stout, J. F.....	Corsicana	Wallace, W. R.....	Castroville
Strange, W. T.....	Dallas	Walling, W. W.....	San Antonio
Stratton, T. W.....	Georgetown	Walthall, L. N.....	San Antonio
Street, Robert G.....	Galveston	Walton, W. M.....	Austin
Stubbs, James B.....	Galveston	Ward, P. H.....	San Antonio
Styles, Carey W.....	Fort Worth	Watts, A. T.....	Dallas
Swain, W. J.....	Austin	Waul, T. N.....	Galveston
Swan, A. K.....	Henrietta	Webb, W. G.....	Houston
Swearingen, J. T.....	Brenham	West, C. S.....	Austin
		West, R. G.....	Austin
		West, S. P.....	Woodville
Taliaferro, S.....	Houston	Wheeler, R. T.....	Galveston
Tarleton, B. D.....	Hillsboro	White, John P.....	Austin
Taylor, L. N.....	Runnels	Whitehead, J. P. C.....	Austin
Templeton, John D.....	Austin	Whitman, M. J.....	Rusk
Terrell, A. W.....	Austin	Wilkes, F. D.....	Lampasas
Terrell, J. O.....	Terrell	Wilkins, W. W.....	Sherman
Terry, J. W.....	Galveston	Willett, G. B.....	Austin
Thomson, T. A.....	Austin	Williams, Eugene.....	Waco
Thompson, Wells.....	Columbus	Williams, W. D.....	Austin
Todd, C. S.....	Boston	Willie, A. H.....	Galveston
Todd, George T.....	Jefferson	Wilson, J. H.....	Galveston
Trezevant, L. E.....	Galveston	Wilson, W. L.....	Galveston
Tucker, Philip C.....	Galveston	Willson, Sam A.....	Austin
Turner, E. P.....	Houston	Willson, Sam P.....	Rusk
		Wood, W. D.....	San Marcos
Upson, C.....	San Antonio	Woods, John S.....	Kaufman
		Woodward, W. H.....	Indianola
Vernor, Henry E.....	San Antonio	Wooten, Dudley G.....	Austin
		Wynne, R. M.....	Henderson

## DECEASED MEMBERS.

BONNER, M. H., Tyler. Died November 25, 1883.  
 FRISBIE, W. H., Groesbeeck. Died September 12, 1882.  
 GOSLING, H. L., Castroville. Died February 21, 1885.  
 LANGUILLE, P. T., Galveston. Died October 14, 1882.  
 MOORE, GEORGE F., Austin. Died August 30, 1883.  
 READ, N. C., Corsicana. Died October 25, 1884.  
 TIMMONS, B., LaGrange. Died ———, 1884.

ANNUAL ADDRESS  
OF  
HON. A. J. PEELER,

VICE-PRESIDENT OF THE TEXAS BAR ASSOCIATION.

*Gentlemen of the Texas Bar Association :*

I am just in receipt of a note from the President, stating that indisposition prevents him from presiding over your deliberations. He requests me to express to you his grateful sense of the honor conferred upon him, and his regrets at his inability to discharge the duties imposed. Though great his disappointment, it can hardly exceed ours. His recognized ability and the active interest he has always taken in everything pertaining to the welfare of the Association, assures us were he present that we would be instructed and entertained by an opening address of more than usual interest. And while in his absence it is my duty to preside, I cannot under the circumstances be expected to even attempt in this respect to fill his place. It is made the duty of the President to communicate all noteworthy changes in constitutional and statutory law. In looking over the recently published laws of the Nineteenth Legislature, I find among the 115 acts passed, some to which I will call your attention. Chapter 8, page 10, gives to orders of sale foreclosing liens upon lands the force and effect of writs of possession.

The writ, which may be issued within thirty days after sale, is binding upon parties to the suit, and those claiming under the defendant by rights acquired pending the suit.

Chapter 16, page 17, removes the restriction as to the number of notaries public to be appointed in each county.

Chapter 26, p. 27, repeals Article 4122 of the Revised Statutes, which prevented railroads from relieving themselves by amendment of their charters from any requirement as to building roads and maintaining passenger and freight depots in or near any city or town in the State within the time named in the original charter. The effect of this re-

peal is to allow railroads to amend their charters in this respect. Chapter 27, page 27, authorizes the transfer of occupation licenses. Whether this will permit a lawyer in these hard times, who finds the profession unprofitable, to sell out to somebody else, is a question. The difficulty of the case, however, will be to find a purchaser.

Chapter 34, page 33, adds Article 1347a to the Revised Statutes. This additional article provides "the acceptance of service and waiver of process, provided for in Article 1240, and the appearance in open court as provided for in Article 1347, shall not in any action be authorized by the contract or instrument of writing sued on, or any other instrument executed prior to the institution of such suit, nor shall such acceptance or waiver of service be made until after suit is brought." The effect of this change in the law is to prevent in future what is generally known as iron-clad notes and similar contracts, as no instrument authorizing the confession of judgment can be made until after the institution of suit, and as even the acceptance or waiver of service is prohibited until after the suit is brought.

Chapter 37, page 35, amends the law in relation to escheats.

Chapter 52, page 50, changes the law as to the terms of the Supreme Court to which errors and appeals are returnable from certain counties.

Chapter 55, page 53, authorizes the Commissioners' Court to provide for more than four terms of the County Court, not to exceed six annually, and to fix the length of said terms.

Chapter 56, page 54, amends, so as to make it more convenient in its operation, the law relating to condemnation of lands by railroads.

Chapter 61, page 59, makes important changes in the general corporation law of the State. Clause 27 of Article 566, R. S., provides that corporations may be organized for any other purpose intended for mutual profit and benefit not otherwise specially provided and not inconsistent with the Constitution and laws of this State. In the amendment this is omitted, and the purposes for which corporations can now be established would seem to be limited to those specifically enumerated in the amendment. Under the original act corporations could be organized for the purchase, location and subdivision of lands, and the sale and conveyance of the same in lots and subdivisions, or otherwise. Under the amendment a corporation is limited to the purchase, subdivision and sale of land in cities, towns and villages. Under the old law a corporation could be created for the erection of buildings and the accumulation and loan of funds for the purchase of real property. Under the law as it now stands the real property so to be purchased must be in cities, towns and villages. The provision of the old law which authorized a corporation for the improvement of the breed of domestic animals by importation, sale or otherwise, is en-

tirely omitted. Chapter 65, page 63, makes important changes in the law relating to the lien of mechanics, contractors, builders and material men, and from such examination as I have been able to give, it seems to be an improvement on the old law. Chapter 67, page 65, makes it the duty of the Attorney General to institute suits against railroad companies and other corporations consolidating contrary to the provisions of Sections 5 and 6 of Article 10 of the Constitution. Chapter 68, page 67, requires railroad corporations to maintain offices in this State, and to have at such offices agents duly authorized to adjust and settle all claims against them for damages, etc.

Chapter 57, page 73, relates to the effect of attachments issued from the County and Justices' Courts. When an attachment has been issued on land, no order or decree foreclosing lien is necessary, but the recital in the judgment of the issuance and levy of the attachment is sufficient to preserve the lien, and the land may be sold under execution after judgment, and the sale thereof vests in the purchaser all the estate of the defendant in the land, etc.

Chapter 78, page 76, makes all instruments which contain reservations of title to property and chattels as security for purchase money, chattel mortgages; and where possession is delivered to the vendee, such instruments are void as to creditors, unless such reservations be in writing and registered as required in the case of chattel mortgages. By a proviso to the act nothing therein is to be construed to contravene the landlord and tenant act.

Chapter 82, page 78, gives authority to the Judges and Clerks of all Courts of Record, and to all Notaries Public, to administer any oath, affidavit or affirmation necessary or required by law, and to give certificates thereof, etc. This greatly enlarges the law upon the subject.

Chapter 83, page 79, relates to the venue of suits against foreign corporations, and to the mode of serving processes thereon. Such corporations may be sued in any court having jurisdiction in any county where the cause of action, or a part thereof, accrued, or where the company has an agent or representative, or in which its principal office is situated. If the corporation has no agent or representative in the State, suit may be brought where the plaintiffs, or either of them reside. A citation or other process may be served on the President, Vice-President, Secretary or Treasurer, or General Manager, or upon any local agent in the State.

Chapter 87, page 81, amends the law relating to the guardianship of the estates of minors, persons of unsound mind and habitual drunkards. Chapter 98, page 90, requires a Justice of the Peace to enter into a bond of \$1,000 for the faithful performance of his duties, and to pay over to the party entitled all moneys which may come into his hands during his term of office.

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Chapter 99, page 90, enables Sheriffs, Constables and their deputies, when sued for damages for acts done in their official characters, to make the principal and sureties on indemnity bonds parties defendant; and for the purpose of obtaining service on such parties, the cause may be continued.

Chapter 106, page 98, authorizes the Governor to commission persons in foreign countries to take acknowledgment of deeds, etc. The number of acts changing the judicial districts and the times of holding courts therein; the spaces occupied by them, and the time consumed in their passage suggests the propriety of a constitutional amendment, which would either require all such changes to be embraced in one general law at each session, and which would perhaps prohibit such changes, except at stated periods, or which would vest in the District Courts, under proper safeguards, the authority to make the changes. I regret to say that the Legislature not only refused to give the people an opportunity to amend the Judiciary Article to the Constitution, so as to give us a more efficient and acceptable system, but also refused to continue the Commission of Appeals.

[NOTE.—Col. Peeler was not informed of the illness of the President and his inability to be present, until the evening before the meeting of the Association, and the time allowed him in which to "communicate the noteworthy changes in statutory and constitutional law," was necessarily limited.—SECRETARY.]

# REPORT

—OF—

## HON. JNO. YOUNG GOOCH

CHAIRMAN OF COMMITTEE ON JURISPRUDENCE AND LAW REFORM.

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*To the Members of the Committee on Jurisprudence and Law Reform  
of the Texas Bar Association :*

GENTLEMEN :—The By-Laws provide—"It shall be the duty of the Committee on Jurisprudence and Law Reform to consider and report to the Association such amendments to the law as in its opinion should be adopted ; also to scrutinize proposed changes in the law, and, when necessary, report upon the same."

I submit that we should report as follows on the subject herein discussed :

### CONSTITUTIONAL AMENDMENTS.

Article V of the Constitution—the Judiciary Article—is manifestly defective. It is recognized by every intelligent member of the legal profession, and by many others, that our courts of last resort, as now constituted, cannot dispose of the business before them with reasonable expedition and deliberation. The Supreme Court is now composed of three judges, and the Court of Appeals consists of a like number. The members of these Courts have performed an amount of labor so far beyond that which could properly and wisely be expected of them, that the health of some of the judges has been entirely destroyed and that of others seriously impaired. Notwithstanding these extraordinary efforts, the business before the Courts accumulated until it amounted in many cases practically to a denial of justice. Recognizing this, the Legislature about four years ago created an auxiliary tribunal, consisting of three judges, known as the Commissioners of

**Appeals.** The Judges of the Commission have at all times been lawyers of profound learning, ability and industry.

Civil cases, which could not be reached and disposed of within a reasonable time by either court, were referred to the Commission for such action as the law prescribed. While the constitutional Courts have been greatly aided and the docket partially relieved with this aid, appeals taken from inferior courts have not at all times been speedily disposed of. The population, business and enterprises of the State in the meantime have largely increased, and the litigation and appeals have increased in the same proportion.

Notwithstanding this, the Legislature at its recent session concluded to dispense with the Commission after October 1, A. D. 1885. It may have been that this action was taken under the impression that a constitutional amendment would be submitted, increasing the membership of the Supreme Court or otherwise providing for disposition of the business before it. But this was not done. It seems to me that the abolition of the Commission without giving other relief, was exceedingly unwise and to be seriously regretted. This expedient will have to be again resorted to, or some other remedy adopted in order to prevent injurious delay and irreparable damage.

We ought to adopt such constitutional provisions relating to our judiciary system as would insure justice and the speedy disposition of cases. In other words, the administration of the law should be speedy, uniform, deliberate and just.

There is no cause for complaint on account of the jurisdiction of our courts of original jurisdiction. The present construction given to the jurisdiction of the District Courts in injunction and contested election cases, supplies what was at one time believed to be grave defects.

But the delay in the disposition of cases in the courts of last resort, makes it manifest that this part of our judicial system is radically inefficient. While stability in our laws is greatly to be desired, expedition in the settlement of controversies in the courts is much more important.

Our Courts of last resort—both civil and criminal—have had imposed on them a greater amount of labor than they can possibly perform; and their desire, arising from this condition, to expedite the business before them, prevents that deliberation and investigation which is necessary to make the opinions satisfactory to the judges themselves, and to command the highest respect and confidence from the bar and litigants.

If we are to suggest a change in the organization of the courts of appellate jurisdiction, what shall it be? I think the Court of Appeals

of three judges should be perpetuated, with criminal jurisdiction only, but the Legislature should have the power to increase its membership when found necessary. I am confident that this Court has met the public expectation and the necessities which brought it into existence. Criminal cases have been disposed of with sufficient rapidity since its organization. The public is peculiarly jealous of delays in criminal cases, and properly so; and where a system now exists which meets our condition in the administration of the criminal laws, a change ought not to be attempted, and, if attempted, it should and, I believe, would fail.

But this Court ought not to have civil jurisdiction. However earnestly and faithfully the judges may try to dispose of the civil business, they have not the time to do so with that deliberation which is satisfactory to either themselves or the bar. Again, the opinions of the Court of Appeals and the Supreme Court on some grave subjects affecting property rights, are in conflict. Any system which fails to secure uniformity of decision and construction of the laws on the same subject is certainly a bad one.

These considerations lead me to believe that the Court of Appeals should have criminal jurisdiction only.

If it be true that the Supreme Court cannot now dispose of the business brought before it, and constantly increasing, and if provision must be made for disposing of the civil business of the Court of Appeals, a system different from that we now have must be adopted. New York and several of the larger States have systems well adapted to statutory change from time to time as public exigency may demand it. A Constitution that can be thus adapted to the varying and increasing wants and necessities of the public, deserves the highest commendation.

#### SUPREME COURT.

I am therefore of opinion that there should be one Supreme Court of three judges—and more if the Legislature shall so prescribe—with appellate jurisdiction co-extensive with the State of all cases which may by law be appealed to it; not to include criminal cases.

There should be two or more judicial divisions in the State, and in each there should be a court of intermediate appeals composed of three judges each, to which appeals should be taken in the first instance from the District and County Courts of all civil cases, and of such criminal cases as might be designated by statute; and appeals therefrom should be well and wisely limited and regulated. These intermediate courts should be in session nine months in each year; and the law should there permit appeals to be heard within sixty days from the date of notice of appeal.



This system would provide one court of last resort for civil cases and one for criminal cases, as well as secure harmony and avoid delay. The number of the members of the court; the number of judicial divisions; the limitation upon appeals, and the compensation of the judges could be fixed by the Legislature from time to time in such manner as would meet the ends for which courts are organized. I have no extended comments to make relating to changes in the law made by the last Legislature. Others have reviewed these acts. I will state, however, that the act passed relating to the selection of juries in criminal cases is calculated to secure more intelligent juries and a more vigorous execution of our criminal laws than the statutes on that subject theretofore existing. I think also that it is a matter of regret that the proposed act did not pass both houses of the Legislature, which would have authorized the Court of Appeals to *affirm* judgments of conviction in criminal cases, notwithstanding there was some error committed by the trial court, where it was clearly manifest that the ends of justice had been reached.

Respectfully submitted,

JNO. YOUNG GOOCH,  
Chairman of Committee on Jurisprudence and Law Reform.

# REPORT OF HON. JOHN A. GREEN,

*A Member of the Special Committee Appointed to  
Draft Proposed Amendments to the Judiciary  
Article of the State Constitution.*

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*To the Members of the Special Committee on Proposed Amendments to  
the Judiciary Article of the State Constitution:*

GENTLEMEN:—I have the honor to submit herewith the following proposed amendments to Article V (Judicial Department) of the State Constitution :

## JUDICIAL POWER.

SECTION 1. The judicial power of this State shall be vested in one Supreme Court, in Courts of Appeal, in District Courts and in such other special courts and inferior courts as the Legislature may from time to time establish by law.

## SUPREME COURT—THE JUSTICES AND THEIR TERMS OF OFFICE.

SEC. 2. The Supreme Court shall consist of five justices, who shall be elected by the qualified voters of the State at a general election, and shall hold their offices for the term of ten years from the date of their election.

## HOW CONSTITUTED.

SEC. 3. The Chief Justice and the Associate Justices of the Supreme Court who may be in office when this amendment goes into effect, together with a sufficient number to make the number of five, shall constitute the Supreme Court.

Upon the adoption of this amendment, the Governor shall appoint a sufficient number of Justices of the Supreme Court, in addition to those who may be in office at that time, to fill the number of five, who shall hold their offices until the next general election. The Justices of the Supreme Court, who may be in office when this amendment is

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adopted, shall continue to serve until their terms of office will expire by the Constitution and laws under which they were elected.

#### THEIR QUALIFICATIONS.

SEC. 4. Each Justice of the Supreme Court shall be a qualified voter; shall have arrived at the age of thirty years, and shall have been a practicing lawyer in this State or a judge of a District Court therein, or such judge and practicing lawyer at least seven years at the time of his election or appointment.

#### THE CHIEF JUSTICE.

SEC. 5. The Justices of the Supreme Court shall select from their own number a presiding officer who shall be called Chief Justice, who shall preside over the Court for such time and perform such duties as may be prescribed by the Court.

#### SALARY.

SEC. 6. The Justices of the Supreme Court shall receive such salary as may be provided for by law; but their salaries shall not be increased or diminished during the time they shall hold their offices by virtue of their election.

#### QUORUM.

SEC. 7. A majority of the Justices of the Supreme Court shall constitute a quorum for the transaction of business. The concurrence of three Justices shall be necessary to the decision of a cause.

#### TIME AND PLACE OF MEETING.

SEC. 8. The Supreme Court shall sit at the seat of government for the transaction of business from the first Monday in October till the last Saturday of June of each year, unless the business before it shall have been sooner disposed of.

#### APPELLATE JURISDICTION.

SEC. 9. The Supreme Court shall have appellate jurisdiction of causes decided by the Courts of Appeals whenever there may be a division in the opinion of such Court of Appeals of cases wherein two of the judges of such Court of Appeals shall concur in certifying the same to the Supreme Court on account of the novelty or importance of the questions involved therein; of cases decided in the Courts of Appeals concerning the public revenue, including the revenue of municipalities or counties, and in cases concerning the public lands, where the State or county or municipality is a party, and also in such other causes decided by the Courts of Appeals and in such manner as the Legislature may from time to time prescribe.

## POWER TO ISSUE WRITS.

SEC. 10. The Supreme Court shall have power to issue such writs as may be necessary to enforce the jurisdiction of the Court, and to compel the Courts of Appeals to proceed to judgment; and the Legislature may confer upon the Supreme Court exclusive original jurisdiction to issue writs of mandamus, except as against the Governor, in classes of cases to be specified by law.

## POWER TO ASCERTAIN FACTS.

SEC. 11. The Supreme Court shall also have power to ascertain such matters of fact as may be necessary to the exercise of its jurisdiction under such rules as it may prescribe

## POWER TO MAKE RULES.

SEC. 12. The Supreme Court shall have power to make rules for its own government and rules for the procedure and government of the other courts of the State.

## CLERK.

SEC. 13. The Supreme Court shall appoint its clerk, who shall hold the office for four years subject to removal by the Court, and who shall give such bond as may be prescribed.

## COURTS OF APPEALS.

SEC. 1. There shall be such number of Courts of Appeals as the Legislature shall deem necessary for the public welfare; and the Legislature shall at its first session after the adoption of this amendment by the vote of the people, lay off the State into as many divisions as there may be Courts of Appeals, so that there shall be in the counties assigned to each division, as near as may be, an equal amount of business to come before each Court of Appeals.

SEC. 2. There shall be elected by the qualified voters of each division at the first general election after this amendment takes effect three judges for each of said divisions, who shall reside in said divisions. The qualifications of the judges of the Courts of Appeals shall be the same as that of the justices of the Supreme Court; they shall hold their offices for the term of six years from the time of their election; they shall receive such annual salary as may be prescribed by the Legislature, but the same shall not be increased or diminished during the time they shall hold their offices by virtue of their election, and a majority of the judges of said Courts shall constitute a quorum for the transaction of business pertaining to said Courts. Until an election takes place as above provided, the Governor, with the advice and consent of the Senate, may, if deemed by the Legislature neces-

sary, appoint the judges of said Courts of Appeals, who shall hold their offices until their successors are elected and qualified.

SEC. 3. The judges of each of said Courts of Appeals shall select from their number a presiding officer who shall be called the Presiding Judge, who shall preside over the Court for such time and perform such duties as may be prescribed by the Court.

#### TERMS.

SEC. 4. The Courts of Appeals shall sit in their respective divisions from the first Monday in October till the last Saturday in June of each year, at such times and places as the Legislature may prescribe.

#### APPELLATE JURISDICTION.

SEC. 5. The said Courts of Appeals shall have appellate jurisdiction co-extensive with their respective divisions in habeas corpus cases and of all cases, civil and criminal, in which final judgment may have been rendered in the District Courts and County Courts, under such regulations as may be prescribed by law; they shall have appellate jurisdiction from such special courts or jurisdictions as may be created by the Legislature in which the right of appeal may be given by law; and the Legislature may, under such regulations as it may prescribe, allow appeals from interlocutory judgments, and it may limit the right of appeal originating in special Courts, Justices' Courts and other inferior Courts.

#### POWER TO ISSUE WRITS.

SEC. 6. The Courts of Appeals and the judges thereof shall have power to issue writs of habeas corpus within their respective divisions; and said Courts shall have power to issue all writs necessary to maintain or enforce the jurisdiction of said Courts, which writs may run to the limit of the State. The Courts of Appeals shall also have power to issue all necessary writs within their respective divisions to compel District, County and Special Courts to proceed to judgment.

SEC. 7. The said Courts of Appeals shall also have power, upon affidavit or otherwise, to ascertain all matters of fact that may be necessary to maintain or enforce their jurisdiction.

SEC. 8. The said Courts of Appeals shall appoint a clerk for each place at which it may sit; which clerk shall hold his office four years, subject to removal by the Court, and shall give such bond as is or may be prescribed.

#### DISPOSITION OF CAUSES NOW PENDING.

SEC. 9. All causes pending in the Supreme Court when this amendment takes effect, shall remain in the Supreme Court created by this

amendment, and be thus determined. Upon the complete organization of the Courts of Appeals under this amendment, and the appointment and qualification of the judges thereof, all causes pending in the present Court of Appeals shall be transferred to the Court of Appeals of the division from which said appeal was taken, in the manner to be prescribed by law. Until the complete organization of the Courts of Appeals under this amendment, and the qualification of the respective judges of said courts, the present Court of Appeals shall continue under the Constitution of which this is an amendment, and all laws in force shall continue in force with respect to the jurisdiction and powers of said court, and the judges thereof, until the complete organization of the Courts of Appeals under this amendment.

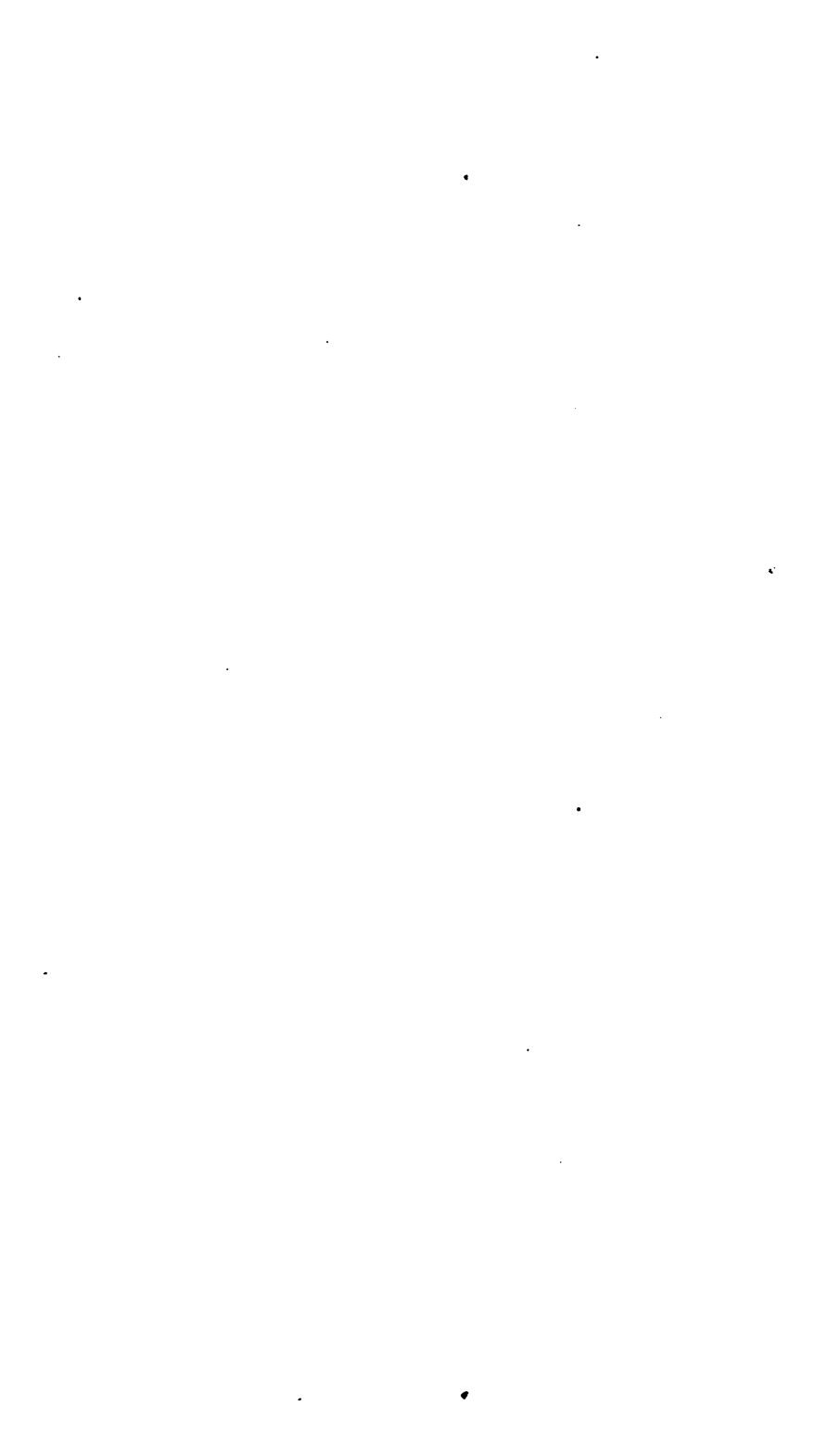
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The above is proposed as an amendment to the Constitution concerning the higher courts.

There is apparently little difficulty in constructing a plan that will be acceptable to the country with respect to the district and inferior courts, so as to adjust it to the plan for the superior courts here proposed. The scheme above outlined, which may be perfected by your wisdom, is designed not only for the present relief, but also for all time to come ; the power given to the Legislature being such that the judicial machinery may be enlarged or diminished to suit the exigencies of the time.

Respectfully submitted to the committee,

JOHN A. GREEN,  
One of the Committee.



✓  
PROCEEDINGS

OF THE

✧ FIFTH \* ANNUAL \* SESSION ✧

OF THE

TEXAS: BAR: ASSOCIATION

HELD IN THE

CITY OF DALLAS, JULY 13, 14 & 15, 1886,

WITH THE

CONSTITUTION AND BY-LAWS

ALSO

OFFICERS, STANDING COMMITTEES AND ROLL OF MEMBERS

FOR THE YEAR 1885-86,

~~~~~  
AUSTIN :

PRINTED BY ORDER OF THE ASSOCIATION,  
1886.



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FEB 4 1936

These Proceedings are published by authority and distributed to members by the Association.

CHARLES S. MORSE, *Secretary*.

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The Sixth Annual Session of the Association will be held in the City of Waco, the second Tuesday in July, 1887.

# TEXAS ‡ BAR ‡ ASSOCIATION.

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## CONSTITUTION.

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### ARTICLE I.—NAME AND OBJECTS OF THE ASSOCIATION.

SECTION 1. This Association shall be called the TEXAS BAR ASSOCIATION.

SEC. 2. Its objects shall be to advance the science of jurisprudence, promote the uniformity of legislation in the administration of justice throughout the State, uphold the honor of the profession of the law, and encourage cordial intercourse among its members.

### ARTICLE II.—MEMBERSHIP.

SECTION 1. Any attorney of the Texas bar, in honorable standing, upon his written application, may be admitted to membership at any regular meeting of the Association. Said application must be indorsed by three members of the Association, and a fee of \$5 shall accompany the same—\$2.50 initiation fee, and \$2.50 annual dues.

SEC. 2. Such application shall be referred to the Board of Directors, who shall report the same to the Association; and if said report be favorable, a ballot shall be taken, and if four-fifths of the members voting shall be in favor of the applicant he shall be declared elected; and if he shall sign the Constitution and pay his admission fee within ten days after he shall be notified of his election, he shall be placed on the roll of members.

### ARTICLE III.—OFFICERS AND THEIR DUTIES.

SECTION 1. The officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, who shall be chosen by ballot at a regular meeting, by a majority of the members present and voting.

SEC. 2. There shall be a Board of Directors, five in number, elected at the same time and in the same manner with the officers; and the President and Vice-President shall be ex-officio members of the Board.

SEC. 3. The officers and Directors shall hold their places for one year, and until their successors shall be elected; provided, that the same person shall not be elected President two years in succession.

SEC. 4. The duties of officers shall be such as usually devolve upon such positions, and may be regulated and prescribed from time to time by the Constitution, By-Laws or resolutions of the Association.

SEC. 5. The Board of Directors shall have exclusive authority, and shall exercise executive supervision over the affairs of the Association between its meetings.

SEC. 6. Vacancies in the offices and Board of Directors shall be filled by the Board, the concurrence of a majority of whom shall be necessary to a choice.

#### ARTICLE IV.—COMMITTEES.

SECTION 1. The following committees shall be appointed annually by the President for the year ensuing, and shall consist of five members each: On Jurisprudence and Law Reform, on Judicial Administration and Remedial Procedure, On Legal Education and Admission to the Bar, on Commercial Law, on Publication, on Grievances and Discipline.

SEC. 2. A Committee of three, of whom the Secretary shall always be one, shall be appointed by the President at each annual meeting of the Association, whose duty it shall be to report to the next meeting the names of all members who shall in the interval have died, with such notices of them as shall, in the discretion of the committee, be proper.

#### ARTICLE V.—GENERAL POWERS.

SECTION 1. This Association shall have power to impose fines, assess fees and establish by-laws for its government. It shall have power to remove officers, and suspend or expel members for good cause, upon written charges exhibited against them by a member, and due notice given of the charges, and of the time they will be brought before the Association.

SEC. 2. The By-Laws shall prescribe the assessments to be levied on the members for the support of the Association and the promotion of its objects.

#### ARTICLE VI.—QUORUM.

SECTION 1. Twenty-five members in regular standing shall constitute a quorum for the transaction of business.

#### ARTICLE VII.—ANNUAL ADDRESS.

SECTION 1. The President shall open each meeting of the Association with an address, in which he shall communicate the noteworthy changes in statutory and constitutional law, and especially such changes as affect the development and progress of the law and the administration of justice.

#### ARTICLE VIII.—MEETINGS.

SECTION 1. A majority of the members present at an annual meeting of this Association shall designate the time and place for holding the next annual meeting.

#### ARTICLE IX.—AMENDMENTS.

SECTION 1. All propositions to alter, amend or add to this Constitution shall

be made in writing at a meeting of the Association, and filed with the Secretary at least one month before being acted upon, and shall not be adopted without the concurrence of two-thirds of all the members present.

#### ARTICLE X.—DUES.

SECTION 1. Each member of the Association shall pay to the Secretary the sum of \$2.50 as annual dues.

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## BY-LAWS.

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#### ARTICLE I.—PRESIDING OFFICERS.

SECTION 1. The President, and in his absence the Vice-President, shall preside at all meetings of the Association; if neither of these officers be present, a President pro tem. shall be chosen by and from the attending members.

#### ARTICLE II.—ADDRESSES AND ESSAYS.

SECTION 1. The Board of Directors, at its first meeting after each annual meeting, shall select some person to make an address at the next annual meeting, and not exceeding six persons to read papers.

#### ARTICLE III.—ANNUAL MEETINGS AND ORDER OF BUSINESS.

SECTION 1. The order of exercises at the annual meetings shall be as follows :

1. Opening address of the President.
2. The nomination and election of members.
3. Report of the Board of Directors.
4. Election of the Board of Directors.
5. Reports of the Secretary and Treasurer.
6. Reports of Standing Committees, as follows : On Jurisprudence and Law Reform; on Judicial Administration and Remedial Procedure; on Legal Education and Admission to the Bar; on Commercial Law; on Publication; on Grievances and Discipline.
7. Reports of special committees.
8. The nomination of officers.
9. Miscellaneous business.
10. The election of officers.
11. The annual address, to be delivered by the person selected by the Board of Directors, shall be made at the morning session of the second day of the annual meeting.

SEC. 2. This order of business may be changed at any meeting by a vote of a majority of the members present; and, except as otherwise provided by the Constitution or By-Laws, the usual parliamentary rules and orders will govern the proceedings.

SEC. 3. No person shall speak more than ten minutes at a time, nor more than twice on the same subject.

SEC. 4. A stenographer shall be employed at each annual meeting.

SEC. 5. Each county bar association may annually appoint delegates, not exceeding three in number, to the next meeting of the Association, and such delegates shall be entitled to all the privileges of membership at and during said meeting.

SEC. 6. All papers read before the Association shall be lodged with the Secretary. The annual address of the President, the reports of the committees and proceedings of the annual meetings shall be printed, but no other address made or paper read or presented shall be printed except by order of the Committee on Publication.

#### ARTICLE IV.—MEMBERSHIP AND DUES.

SECTION 1. The initiation fee to entitle a person to membership shall be \$5, which shall include the annual dues for the first year.

SEC. 2. The annual dues shall be payable at the annual meeting in advance, and should any member neglect to pay them for any year, at or before the next annual meeting, he shall cease to be a member. The Secretary shall give notice of this By-Law, within sixty days after each meeting, to all members in default.

#### ARTICLE V.—OFFICERS AND COMMITTEES.

SECTION 1. The terms of office of all officers elected at the annual meeting shall commence at the adjournment thereof, except the Board of Directors, whose term of office shall commence immediately upon their election.

SEC. 2. The President shall appoint all committees, except the Committee on Publication, within thirty days after the annual meeting, and shall announce them to the Secretary, who shall promptly give notice to the person appointed. The Committee on Publication shall be appointed on the first day of each meeting.

SEC. 3. The Secretary's and Treasurer's reports shall be examined and audited by the Board of Directors before their presentation to the Association.

SEC. 4. The Board of Directors and all standing committees shall meet on the day preceding each annual meeting, at the place where the same is to be held, at such hour as their respective chairmen shall appoint, and should any member of any committee be absent, the vacancy may be filled by the members of the committee present.

SEC. 5. The Committee on Publication shall meet within one month after each annual meeting, at such time and place as the chairman shall appoint.

SEC. 6. Special meetings of any committee shall be held at such times and places as the chairman thereof may appoint; reasonable notice shall be given by him to each member by mail.

#### ARTICLE VI.—DUTIES OF COMMITTEES.

SEC. 1. It shall be the duty of the Committee on Jurisprudence and Law Reform to consider and report to the Association such amendments to the law as in

its opinion should be adopted; also to scrutinize proposed changes in the law, and, when necessary, report upon the same.

SEC. 2. It shall be the duty of the Committee on Judicial Administration and Remedial Procedure to observe the practical workings of the judicial system of the State, and recommend by written or printed report, from time to time, any changes therein which observation or experience may suggest.

SEC. 3. It shall be the duty of the Committee on Legal Education and Admission to the Bar to report the most suitable means for promoting and facilitating the study of the law, and the necessity or propriety of elevating the standard of qualifications for admission to the bar, and the best means for accomplishing that object.

SEC. 4. It shall be the duty of the Committee on Commercial Law to report the best means to produce uniformity in commercial law and usages.

SEC. 5. The Committee on Publication shall pass upon and have printed all papers, should they deem them of sufficient importance, except as it is otherwise provided by the Constitution and By-Laws.

SEC. 6. The Committee on Grievances and Discipline shall report as to the best means of upholding the honor and dignity of the law in the professional intercourse among the members of this Association. All complaints against the members of this Association shall be presented to this committee, and if the committee shall be of the opinion that the matters alleged are of sufficient importance, they will determine upon the course of procedure for the trial of the same; and shall give notice to the party charged of the nature of the complaint and the time of the trial thereof by the Association, all of which the complainant shall also be notified of by the committee.

#### ARTICLE VII.—RESOLUTIONS.

SEC. 1. No resolution complimentary to any officer or member, for any service performed, paper read, or address delivered, shall be considered by this Association.

#### ARTICLE VIII.—AMENDMENTS.

SEC. 1. These By-Laws may be amended at any meeting of the Association, by a vote of two-thirds of those present, provided that a copy of the proposed amendment shall have been filed with the Secretary on or before the first day of such annual meeting.

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PROCEEDINGS  
OF THE  
FIFTH \* ANNUAL \* SESSION  
OF THE  
TEXAS \* BAR \* ASSOCIATION  
HELD IN THE  
CITY OF DALLAS, JULY 13, 14 & 15, 1886.

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*FIRST DAY.*—MORNING SESSION.

DALLAS, TEXAS, July 13, 1886.

The Association was called to order by the President, Hon. A. J. PEELER.

The following officers were present :

Hon. A. J. PEELER, President.

CHAS. S. MORSE, Secretary.

ROBERT G. WEST, Treasurer.

C. C. GARRETT and F. H. PRENDERGAST, of the Board of Directors.

E. G. BOWER, N. W. FINLEY and F. H. PRENDERGAST, of the Committee on Jurisprudence and Law Reform.

T. S. MAXEY, A. M. CARTER and JOHN S. WOODS of the Committee on Judicial Administration and Remedial Procedure.

WILLIAM AUBREY and J. O. TERRELL, of the Committee on Legal Education and Admission to the Bar.

RICHARD MORGAN, JR., Chairman of Committee on Commercial Law,

J. Y. HOGSETT, Chairman of Committee on Deceased Members.  
C. C. GARRETT and T. S. MAXEY, of the Committee on Publication.  
O. M. ROBERTS, B. H. BASSETT, JNO. A. GREEN, JOHN HANCOCK,  
JOHN S. WOODS and I. N. ROACH, of the Special Committee on the  
Judiciary Article.

W. P. BALLINGER, F. H. PRENDERGAST and N. W. FINLEY, Delegates to the National Bar Association.

The Secretary proceeded to call the roll, when it was announced that over one hundred and fifty members were present, and on motion the call was suspended.

The Board of Directors made the following report :

*To the President and Members of the Texas Bar Association :*

GENTLEMEN—The Board of Directors to whom was referred the following applications for membership, after having carefully considered the same, report favorably on each of said applications and recommend that the applicants be elected as members of this Association.

Respectfully submitted,

C. C. GARRETT,

F. H. PRENDERGAST.

\* The names of the applicants are as follows :

JOHN L. HENRY, T. J. BEALL, S. D. REAVES, E. A. ATLEE, CHAS. FRED TUCKER, S. P. GREENE, E. W. TERHUNE, W. P. MCLEAN, R. W. ANDREWS, C. J. BRADSHAW, JOHN G. WINTER, D. L. RUSSELL, L. B. DAVIS, C. L. POTTER, FRED CARLETON, B. G. BIDWELL, W. A. KINCAID, T. H. CONNER, THOS. D. DODD, W. SPENCE, W. S. McDONALD, W. P. SEBASTIAN, M. L. CRAWFORD, E. B. PERKINS, R. C. PORTER, HYDE JENNINGS, W. H. CLARK, J. C. SCOTT, S. C. PADELFORD, JASPER N. HANEY, M. R. GEER, D. T. BLEDSOE, J. M. DICKINSON, R. DEARMOND, SAWNIE ROBERTSON, W. B. WRIGHT, R. M. HUTCHINS and T. S. MILLER.

On motion the report was adopted, a ballot taken and the applicants duly elected.

On motion of Hon. JOHN HANCOCK, Mr. THOS. H. WHELESS was employed to make a stenographic report of the proceedings.

The President then read his opening address. (See Appendix.)

The regular order of business was then taken up and an election of a Board of Directors for the ensuing year was had, which resulted in the selection of the following :

THOS. J. BEALL, Fort Worth; JOHN L. HENRY, Dallas; L. C. ALEX-



ANDER, Waco; B. H. BASSETT, Brenham; F. CHAS. HUME, Galveston.

The following committees asked for further time within which to present their reports, and were granted until to-morrow morning: On Jurisprudence and Law Reform; on Judicial Administration and Remedial Procedure; on Legal Education and Admission to the Bar; on Commercial Law and on Grievances and Discipline.

The Committee on Publication made the following report, which was adopted:

*Hon. A. J. Peeler, President of the Texas Bar Association:*

Your Committee on Publication report that they have caused to be published with the Proceedings of the Association, the annual address by Hon. A. J. Peeler, Vice-President; report of Hon. John Young Gooch for Committee on Jurisprudence and Law Reform, and the report of Hon. John A. Green, member of the committee on proposed amendment to the Judiciary Article. They also approve the publication and printing of circulars issued by the President of the Association, and also of the proposed amendment to the Judiciary Article of the State Constitution as framed by the special committee appointed for that purpose.

Respectfully submitted,

C. C. GARRETT,

T. S. MAXEY,

For Committee.

Reports of Special Committees were called for and the committee appointed at the last meeting to draft a proposed amendment to the Judiciary Article of the State Constitution reported through its chairman, Hon. O. M. ROBERTS, that the report had been made and published, and a copy sent by the Secretary to each member of the Association. The committee desired until the evening session to present its report, which upon motion was granted, and the report made the special order for three o'clock.

On motion of Hon. E. G. BOWER, the Association adjourned until three o'clock.

#### *FIRST DAY—EVENING SESSION.*

The Association was called to order at three o'clock. Quorum present.

The Special Committee on the proposed amendment to the Ju-

diciary Article presented their report, and each member in attendance was furnished with a printed copy.

[Note.—The Association having decided, on motion, that the debates on various amendments, should not be published in the proceedings, the report as amended, and finally adopted, will be found in the Appendix, together with the minority report by John A. Green, Esq.]

Sections 1, 2, 3, 4 and 5 were adopted without debate. A motion to amend Sec. 6, by striking out the words “five thousand” and inserting “forty-five hundred” was lost, and the section was adopted as reported by the committee.

Pending debate on Sec. 7, (Appellate Jurisdiction,) on motion, the further consideration of the report was postponed until to-morrow morning.

The Board of Directors made the following report :

*To the Officers and Members of the Texas Bar Association :*

GENTLEMEN—The Board of Directors have examined and approved the accounts of the Secretary and Treasurer of this Association, as contained in their annual reports.

Respectfully submitted,

T. J. BEALL, Chairman.

### Secretary's Report.

DALLAS, TEXAS, July 13, 1886.

*To the President and Members of the Texas Bar Association :*

GENTLEMEN—I have the honor to submit herewith my annual report as Secretary of the Texas Bar Association :

#### RECEIPTS.

|                                                           |          |
|-----------------------------------------------------------|----------|
| Initiation fees from 18 new members at \$2.50 each, ..... | \$ 45 00 |
| Annual dues received from members, .....                  | 282 50   |
| Balance in my hands per last report, .....                | 66 24    |
| Total .....                                               | \$393 74 |

#### DISBURSEMENTS.

|                                                           |          |
|-----------------------------------------------------------|----------|
| Amount paid for printing proceedings for 1885, .....      | \$102 50 |
| Expressage on proceedings, .....                          | 2 75     |
| Paid Von Boeckman for printing, .....                     | 69 75    |
| Paid Triplett & Hutchings for printing, .....             | 6 50     |
| Postage, postal cards and wrappers, .....                 | 72 00    |
| Salary from May 1, 1885, to July 1, 1886, 14 months. .... | 140 00   |
| Total .....                                               | \$393 50 |

Leaving a balance in my hands of 24 cents.

From the above statement it will be seen that the receipts for initiation fees and dues up to July 10, the time of closing this report, have been sufficient to pay all the expenses of the Association, without the necessity of having to draw upon the Treasurer, who still has in his hands the same amount of \$361.35, as per his last report.

I desire also to submit a general statement of the receipts and disbursements of the Association, from its organization down to the present meeting :

#### RECEIPTS.

|                            |                     |            |
|----------------------------|---------------------|------------|
| 1882.....                  | Cash received ..... | \$595 00   |
| 1883.....                  | " " .....           | 92 50      |
| 1884.....                  | " " .....           | 532 50     |
| 1885.....                  | " " .....           | 240 00     |
| 1886.....                  | " " .....           | 327 50     |
| Total amount received..... |                     | \$1,787 50 |

#### DISBURSEMENTS.

|                                          |                     |            |
|------------------------------------------|---------------------|------------|
| 1882.....                                | Cash paid out ..... | \$184 15   |
| 1883.....                                | " " " .....         | 89 00      |
| 1884.....                                | " " " .....         | 508 68     |
| 1885.....                                | " " " .....         | 250 58     |
| 1886.....                                | " " " .....         | 393 50     |
| Cash in treasury .....                   |                     | 361 35     |
| Amount in Secretary's hands .....        |                     | 24         |
| Total amount disbursed and on hand ..... |                     | \$1,787 50 |

My annual reports from 1882 to 1886 inclusive, correspond with these various amounts, and proper vouchers have been filed and submitted to, and approved by the Board of Directors for each year.

My annual report for the present year was closed on the 9th of the present month, in order to allow me time to prepare it for this meeting. From that it will be seen that on the 10th of July the Association had in the treasury \$361.35, and and in my hands 24 cents, making, as before stated, a total to the credit of the Association of \$361.59.

All of which is respectfully submitted.

CHAS. S. MORSE, Secretary.

### Treasurer's Report.

*To the President and Members of the Texas Bar Association :*

GENTLEMEN—I have on hand, belonging to the Association, the sum of \$361.35. I have no receipts nor disbursements to report, as no funds have been received by me, and no warrants have been drawn on the funds in my hands, as Treasurer, since my last annual report.

Respectfully submitted,

ROBT. G. WEST, Treasurer.

On motion the Association adjourned until to-morrow morning at ten o'clock.

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*SECOND DAY—MORNING SESSION.*

WEDNESDAY MORNING, JULY 14, 1886.

The President called the Association to order at 10 o'clock.

On motion the reading of the minutes was dispensed with.

The Board of Directors made the following report :

*To the President and Members of the Texas Bar Association :*

GENTLEMEN—The Board of Directors have had under consideration the applications of the following persons for membership, viz :

Henry G. Coke, W. M. Giles, M. H. Cate, Alex. White, J. D. Cunningham, S. B. Kilgore, C. B. Kilgore, W. B. Gano, J. F. Cooper, W. M. Minyard and Wm. J. Austin, and having approved the same would respectfully recommend their election.

T. J. BEALL, Chairman.

The report was on motion received, and the applicants duly elected as members of the Association. The President then stated that Judge ROBERTSON, of the Supreme Court, in response to an invitation of the Board of Directors, would now deliver an address.

Hon. SAWNIE ROBERTSON then delivered the Annual Address to the Association. [See Appendix.]

The Committee on Judicial Administration and Remedial Procedure made the following report :

**Report of Committee on Judicial Administration and Remedial Procedure.**

*Hon. A. J. Peeler, President of the Texas Bar Association.*

The by-laws of the Association make it "the duty of the Committee on Judicial Administration and Remedial Procedure to observe the practical workings of the judicial system of the State and recommend by written or printed report, from time to time, any changes therein which observation or experience may suggest."

The people of Texas, and particularly members of the legal profession, have been for years impressed with the necessity of making such changes in our judicial system as will enable our courts of last resort to promptly decide causes submitted to them, without the delays necessarily incident to the present crowded condition of the dockets.

Another committee has under its supervision resolutions looking to an amend-

ment of the constitutional article upon the Judiciary. But constitutional changes make slow progress. Meanwhile, causes are rapidly accumulating in the Supreme Court and some measure of immediate relief would seem to be demanded to expedite the dispatch of business. As one of the means tending to the accomplishment of this end, the committee is of opinion that laws should be enacted, or the necessary rules promulgated, requiring all records filed in the Supreme Court to be printed. The advantages of a printed record are obvious to every lawyer. Inducing conciseness and brevity in the preparation of the transcript and lightening the labors of the Judges, it assures a more ready and intelligent apprehension of the real points in controversy, and thus affords a guaranty of prompt decisions and a greater number of decided causes. The committee is further of opinion that it is competent for the Supreme Court, without resorting to the Legislature, to make such appropriate rules and regulations as may be required to render effective the suggestions contained in this report. Warrant for judicial action in this behalf may be found in section 25, art. V. of the Constitution, which provides that "the Supreme Court shall have power to make rules and regulations for the government of said court, and the other courts of the State; to regulate proceedings and expedite the dispatch of business therein." Your committee, therefore, respectfully recommends the adoption of the following resolutions:

RESOLVED BY THE TEXAS BAR ASSOCIATION, That the Supreme Court be requested, at its earliest convenience, to so amend the rules of said court as to require, under such restrictions and limitations as they may deem proper—looking to economy and accuracy in the work—the printing of all records filed therein.

RESOLVED FURTHER, That the President of the Association be instructed to transmit, immediately after the adjournment of this meeting, to each member of said court a duly certified copy of these resolutions.

The Committee on Judicial Administration and Remedial Procedure also suggests to the Association the propriety of taking such action as may be thought essential, looking to the printing and publication of certain laws hereinafter set forth.

1st. THE LAWS OF COAHUILA AND TEXAS. It is well known to the profession that under the laws of Coahuila and Texas, claims and rights to large bodies of land have grown up, the titles to which, after the lapse of half a century, are still unsettled and are constantly being litigated in the courts. But these laws, owing to their scarcity, are practically inaccessible to the large body of Texas lawyers. So far as this committee is advised there are comparatively few copies in existence. Here and there may be found a volume, but not in sufficient numbers to be available to the profession generally. The value of these laws is self-evident to every practitioner, and the large number of causes, in which they have been examined and construed by the Supreme Court, bears evidence of their utility and importance.

2nd. THE LAWS OF TAMAULIPAS. No English translation of these laws has been made. It is not the purpose of the committee to recommend the translation of the entire body of the laws of the State of Tamaulipas, but of such only as have been enacted since the adoption of a separate constitution by that State up to the

date of the proclamation of the treaty of Guadalupe-Hidalgo. It is known as a part of the political history of our State, that Tamaulipas formerly exercised jurisdiction over a part of the territory now embraced within the limits of Texas; that portion situated between the Rio Grande and Nueces rivers, south of a line drawn from the northern boundary of Webb county to the mouth of Moras creek.

Although the Congress of the Republic, on December 19, 1836, passed an act extending the boundary of Texas from the mouth of the Sabine to the mouth of the Rio Grande, the boundary line was not definitely fixed and settled, nor the occupancy and ownership by Texas of the territory referred to, recognized and acquiesced in by Mexico until the treaty of peace, which was concluded by the two Republics on the 2d day of February, 1848, and proclaimed July 4, 1848. Intermediate between the adoption of a constitution by Tamaulipas, in 1825, and July 4, 1848, valuable grants of land, situated within the present State of Texas, were extended by the State of Tamaulipas, and these, in a number of instances, by subsequent mesne conveyances executed in conformity with the local laws of that State and the general principles of civil law jurisprudence, passed into the hands of remote vendees. These titles have proven a fruitful source of litigation, and while it becomes essential, in their determination, to look to the requirements of the civil law, the local laws of the State of Tamaulipas should not be considered an unimportant factor. The period to which a translation of these laws should be limited, is fixed at the date of the proclamation of the treaty of Guadalupe-Hidalgo, for the manifest reason that subsequent local laws of Tamaulipas would be clearly inoperative to affect titles to real estate situate within the limits of Texas. Not so, however, as to laws passed prior to the date of such treaty; the distinction here indicated, finding illustration in decisions of our Supreme Court.

3rd. THE ORDINANCES AND DECREES OF THE CONSULTATION AND THE PROVISIONAL GOVERNMENT OF TEXAS, 1835-36, TO WHICH MAY BE ADDED THE DECLARATION OF TEXAN INDEPENDENCE AND THE CONSTITUTION OF THE REPUBLIC.

To preserve in a compact and permanent form the earlier legislation of Texas, which reduced chaos to order and gave direction to the movement speedily culminating in the Revolution and Independence of our State, should be a matter of pride to every citizen of the commonwealth. Time with its changes is rapidly removing the "land marks" of the early and historic days of the Republic, and we now have among us but few of the active participants in those stirring events, whose efforts breathed life into the Republic and established the ground-work for the present prosperity of the State. Let us garner the scattered fragments of their glorious work and preserve the memorials of their grand achievement!

4th. THE LAWS, GENERAL AND SPECIAL, OF THE REPUBLIC AND STATE OF TEXAS FROM 1836 TO 1876, BOTH INCLUSIVE.

After diligent inquiry the committee has been unable to ascertain the existence of a single complete printed set of these laws. They will not be found in any of the State departments, nor in either of the Libraries of the Supreme Court. The burning of the capitol in 1881, destroyed what printed copies of these laws were

then in the Department of State, and no steps have since been taken by the Legislature to supply them. Owing to the scarcity of printed volumes of the early laws, they are held by book sellers, when they can be found at all, at prices much in excess of their real value; the only set known to the committee, offered for sale, and that incomplete, including the late session acts, being held at the sum of \$250. The price demanded places them, if attainable, beyond the reach of many practitioners and others requiring their use. But it may be objected that the contemplated work will not justify the cost of publication. In reply the committee believes that the proceeds resulting from its sale will be sufficient to reimburse the State for all reasonable expenses necessarily incurred. With the necessary presses and machinery on hand, the work can be performed by the State's printing establishment at a minimum cost, an approximate estimate of which made by the State printer—W. D. Moore, Esq.—including the estimate of the cost of printing other laws, organic and statutory, hereinbefore enumerated, is here given:

ESTIMATE FOR RE-PRINT OF LAWS AND DECREES OF COAHUILA AND TEXAS; LAWS AND DECREES OF CONSULTATION, &C.; LAWS OF TAMAULIPAS 1824 TO 1848; AND ALL THE LAWS, GENERAL AND SPECIAL, OF TEXAS FROM 1836 TO 1879—INCLUDING ALL INDEXES, CONSTITUTIONS, TREATIES, &C.

|                                                                                                                                                          |          |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| For 5 Vols of 800 pp. each, 500 copies each Vol., Brevier type solid, large page (size of Rev. Stats) \$4.50 per Vol. ....                               | \$11,250 |
| For 5 Vols, 800 pp. each, 1000 copies each Vol. (same as above) \$2.75 per Vol. ....                                                                     | 13,750   |
| For 11 Vols, 750 pp. each in Long Primer type, same size page as required for the laws as at present printed, 500 copies each Vol., \$2.46 per Vol. .... | 13,530   |
| For 11 Vols, 750 pp. each, (same as above) 1000 copies each Vol., \$1.64 per Vol. ....                                                                   | 18,40    |

(Signed)

W. D. MOORE,  
State Printer.

July 2, 1886.

N. B. Electrotyping will cost about 20 cents per page for the large size and about 35 cents for the small size.

W. D. M.

It is thought by the committee that the cost of translating the laws of Tamaulipas, to be added, will not exceed five hundred dollars. Perfect accuracy is not claimed for the foregoing estimate, but it will enable us to approximate the probable expense of the undertaking. The cost, it appears from an inspection of Mr. Moore's statement, is inconsiderable when account is taken of the importance and value of the proposed work, and the committee indulge the hope that the Legislature will readily formulate into law the reasonable recommendations of the Association made in this behalf.

It is believed that the State may well afford to furnish a complete set of all laws

embraced in this report at a cost of twenty-five dollars, and thus bring them within the reach of all.

Your committee therefore recommends the adoption of the following resolutions:

RESOLVED, BY THE TEXAS BAR ASSOCIATION. FIRST. That the Legislature, at its next ensuing session, be requested and respectfully urged to provide for the printing and publication of the following laws :

1. Constitution and laws of the State of Coahuila and Texas.
2. The Ordinances and Decrees of the Consultation and the Provisional Government of Texas, including the Declaration of Texan Independence and the Constitution of the Republic.
3. The laws, general and special, of the Republic and State of Texas, from 1836 to 1876, both inclusive.
4. An English translation of the Constitution of Tamaulipas of 1825, and the laws enacted thereunder by said State up to the 4th July, 1848.

SECOND. That a committee of five be appointed by the President to present these resolutions to the appropriate committees of the next Legislature.

Respectfully submitted,

T. S. MAXEY,  
J. S. WOODS,  
A. M. CARTER,  
Committee.

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### ADDITIONAL REPORT.

Your Committee on Judicial Administration and Remedial Procedure wish to make the following additional report :

#### COSTS.

We recommend that in all suits instituted in the District and County Courts the plaintiff shall file with his petition a bond for the cost, to be approved by the clerk, or make a deposit of twenty-five dollars to cover the cost of such suit, or file an affidavit in lieu of the bond, as now provided by law. That the defendant may be required by an order of the court to give security for costs incurred by such defendant, or make a deposit therefor of a sum of money sufficient to cover same.

#### CONTINUANCES.

We recommend that the law relating to continuances should be amended so that no continuance should be granted for want of testimony, unless the applicant therefor present his showing in writing, stating that the applicant has used due diligence to procure the testimony, stating the diligence, and shall also show the testimony to be material to the issue joined.

#### DEFENSES TO ACTIONS ON NOTES, BILLS OF EXCHANGE, &C.

We believe that the plaintiffs in all actions on promissory notes, bills of exchange and accounts, which accounts are supported by the affidavit of plaintiff, or his agent or attorney, as now provided by law, should have judgment by default on the first day of the Term of Court, unless the defendant should file an answer,



supported by his affidavit, that he verily believed that he has a good defense to the cause of action, or part thereof, as set forth by the plaintiff's petition.

**MOTIONS TO SUPPRESS DEPOSITIONS.**

We recommend that the law relating to the taking of testimony by deposition be amended, so that the court shall have a discretion in acting upon motions to suppress depositions for defects in the manner and form of returning same. That no motion to suppress should be entertained after the deposition has been on file ninety days.

Respectfully submitted,

T. S. MAXEY,

J. S. WOODS,

A. M. CARTER,

Committee.

The Committee on Jurisprudence and Law Reform made the following report:

**Report of Committee on Jurisprudence and Law Reform.**

*To Hon. A. J. Peeler, President of the Texas Bar Association :*

Your Committee on Jurisprudence and Law Reform report as follows :

We find there is a custom among many attorneys throughout the State, of discussing matters before the jury that are not in evidence. We see the higher courts often condemning the practice, even when they decline to reverse a judgment in favor of the attorney indulging in this objectionable practice.

The Court of Appeals have generally prevented the State from reaping the benefit of convictions thus obtained, by reversals of the judgments, but an acquittal thus obtained cannot be remedied.

Our judges have held different views on the subject. In the case of *Taylor vs. McNutt*, 58 Texas, 71, Judge Watts held it to be error to permit an attorney to discuss a question of fraud, because that question was not before the jury. And in the case of *Redford & Wood v. Lyon*, 6 Texas Law Review, 109, Justice Robertson held it was not error for the attorney to discuss the question of fraud, because that question was not before the jury.

The present construction and application of the rule does not afford adequate relief. The Supreme Court held that when the District Judge overruled a motion for a new trial, he in effect decided that the improper remarks of counsel worked no injury. The very object of an appeal is to determine whether the District Judge correctly ruled with reference to the law and the rights of parties, and yet we are met here with the presumption that the District Judge correctly decided.

We therefore present to the Association the propriety of appointing a committee to report the best method of preventing the abuses referred to.

With reference to the matter of issuing mandates referred to this committee at last meeting of association—

1. We think when a cause has been decided in the Supreme Court, the mandate should be taken out within one year from the date of decision, and may be taken out in two years, after good cause shown and after notice to opposite party.

2. In case of reversal the mandate, with copy of opinion, should be filed at least five days before the first day of the term of court at which the party desires a trial, and notice of such filing given to the opposite party.

3. In all cases of reversal, the State should pay the costs of such mandate when so demanded by appellant, if the appellee is insolvent.

4. Where the judgment is affirmed, the appellee should be entitled to the mandate, if need be, without being compelled to pay costs.

We think the present mode of taking testimony should be enlarged; that the present mode be retained, but that either party have the additional right to take testimony *ORE TENUS*, or by oral questions, upon giving proper notice of time and place. The necessity of this rule is apparent in all suits involving the detection of fraud.

In our system of jurisprudence, where we have law and equity combined, and where one suit may depend on both legal and equitable demands, and where the number of issues that may arise in a case is unlimited, we think something should be done to limit the number of issues sent to the jury for decision, and to better enable them to determine understandingly the issues that are sent to them. We think this may be in a measure accomplished by developing the following suggestions :

1. Let the court ordinarily decide all questions of equitable cognizance, unless there is a question of credibility, and then let the judge submit the special issue to the jury.

2. Taking all the evidence to be true, whether it proves or disproves an asserted fact should be decided by the court—as, whether given testimony would prove facts sufficient to put a man on notice of some other fact, or whether the party was guilty of negligence or carelessness.

3. Let the judge sum up all the evidence adduced on each issue, and explain to the jury when evidence is admissible to prove one fact and not to prove another. Let this summing up be in writing.

4. Let the judge submit to the jury only special issues, and the judge upon these findings render the judgment.

5. Let the judge hear counsel upon the law and facts of the case and the issues involved, and then state to counsel the issues he will submit to the jury, and shall then permit counsel to discuss only those issues to the jury.

6. Whenever in the opinion of the judge the evidence is not sufficient to sustain a verdict for one of the parties, he should, upon proper motion, withdraw the case from the jury and enter the proper judgment; but his action on this motion should not preclude him from granting a new trial.

We suggest that, in view of the importance of execution sales under our law,

there should be a provision for recording the execution in full, with the return thereon, and such record should be held evidence.

We further suggest that, whenever real estate is sold under execution, the officer making the sale, should report his action to the court from which the execution issued, which court, upon notice to the opposite party, shall enter up proper judgment vesting title in the purchaser or disapproving the sale, and that no notice of any secret equity or claim to the land shall affect the purchaser, whoever he may be, unless said notice is given to the plaintiff in execution before the levy of the execution.

Whenever sale of land is made by a trustee, a proper deed made by the trustee should be *PRIMA FACIE* evidence that all the requirements of the power under which the trustee acted had been complied with.

We recommend that the State make provision for printing all records of causes on appeal, and that the Supreme Court have power to deal with irrelevant matter inserted in said record, and to tax the costs thereof against the party at fault.

Where the printing can be done by the District Clerk, he should be allowed a compensation for superintending the same, to be paid by appellant and taxed as cost.

The State should pay for the printing a given amount per hundred words.

The amount of labor saved to the Supreme Court would compensate the State for the outlay.

Concurred in by a majority of the committee present, and respectfully submitted.

F. H. PRENDERGAST, Chairman.

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The Committee on Legal Education and Admission to the Bar made the following report :

### **Report of Committee on Legal Education and Admission to the Bar.**

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#### *To the President and Members of the Texas Bar Association :*

The Committee on Legal Education and Admission to the Bar submit the following report :

Taking it for granted that the "propriety of elevating the standard of qualification for admission to the Bar" is admitted by all, the committee do not propose to dwell on that subject. They will only say, that while there are some District Judges who require rigid examinations, and some examining committees whose standard of qualification for admission is sufficiently high, it will hardly be denied that those instances are exceptional, and that in most instances applicants are admitted without having been subjected to an examination sufficient to test their qualifications.

As one of the means of elevating the standard, the committee suggest that it is highly desirable that the student, before commencing the study of law, should have had the benefit of a collegiate or classical education. The committee are

not prepared to suggest that such an education should be made an absolute requirement, but they do not hesitate to say that if it were so made, it would most efficiently promote the elevation of the professional standard. In some of the States where the period of study is prescribed, the advantage of such an education is recognized by reducing the length of time of preparatory study otherwise required of students.

And this brings us to the question, "Should the law prescribe a fixed period of study?" This is done in many States. From a report published in the proceedings of the American Bar Association for 1881, there appears to be such legislation in Colorado, Connecticut, Delaware, Illinois, Kansas, Maryland, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont and the District of Columbia. The time required varies from two to five years. The American Bar Association is on record in favor of three years. It may not be amiss, in considering this subject, to look abroad and see the rule that prevails in England, France and Germany. In England "a barrister's legal education extends over a period of three years, or thereabouts." *Am. Law Rev.*, Vol. 19, p. 682. "To entitle a person to be now admitted as a solicitor, it is requisite that he should, by a contract in writing, be articled, or, to use a more homely term, 'apprenticed' as a clerk to some practicing solicitor for a period of five years." "In case the student be a graduate of any University in the United Kingdom, his term of clerkship is reduced to a period of three years." *Ib.*, pp. 688, 689. The following extract from "An Historical Sketch of the French Bar," by Archibald Young, a Scotch advocate, published in 1869, will show the requirements in that country at that time. He says :

"According to existing regulations, the education required in order to become a member of the French Bar, is of a very high character. The student must obtain the diploma of Bachelor of Letters at certain public schools, and must then present himself at the School of Law, where he is inscribed as a pupil, and where he studies under certain professors for a period of three years, attending lectures on Roman Law; on the Code of Napoleon; on the study of law generally; on Criminal Legislation and Criminal Procedure; on Administrative Law; on the Law of Nations, together with conferences on the Pandects. He must also write theses on the Roman Law; and on the Criminal and Commercial Law. He must then undergo examinations on all these different subjects, and if he succeeds in passing, then he receives, at the close of his third year, the diploma of Licentiate in Law, and is entitled to be sworn before the Court, and called to the bar."

The preparation required in Germany is stated by Dr. Morgan Hart, in his narrative of his experience in German Universities. He says :

"A young German wishing to fit himself for the profession, must first acquire the broad general culture of the Gymnasium. In the next place, he must attend the University at least three full years, six half years, and hear certain prescribed lectures, say eighteen or twenty in all. He need not hear them in any prescribed order, but he must hear them at some time. He need not pass the University examination, but he must pass the State examination, which is a serious matter. This State examination is conducted in a peculiarly German fashion. The candi-

date presents himself to the Court of Appeals of the State or province, bringing with him Gymnasial or University certificates. The Court assigns him two cases which have actually come up upon appeal, and upon which he must give a reference. He gets fac-similes of all papers in each case, from the original summons down to the final appeal on error, and also all the evidence. In his reference he must revise every point taken on both sides, whether of law or fact, whether controverted or not. In short he must subject each case to an exhaustive theoretical analysis, and submit his report in writing. This is a labor of some months. After the analysis or report has been read and approved by the court, the candidate is admitted to an oral examination which lasts from two to three hours. This second ordeal over, he becomes an auditor. That is to say, he is assigned to some one of the higher courts as a compulsory listener for two years. At the end of two years, he has his choice to pass his second examination then, and be admitted to practice, or to wait two years longer as assessor, that is, one who sits on the bench with the judges, but has no vote; pass a final examination as a candidate for judicial appointment."

From this brief survey, it appears that there is a formidable array of authority in support of a fixed period of time of study as one of the prerequisites to entering the profession, and there is at least one member of the committee, who believes that two years of study should be required in every instance. But while the committee believe that three years is little enough time to be given to preparation by the student who aspires to the higher walks of the profession, they hesitate to recommend legislation fixing either two or three years as an imperative requirement. They are aware of the fact that most law schools in the United States confer degrees after two years' study, and that there are a number which do so even after one year's study. They are of the opinion that no regulation fixing the period of study will prove effective, unless accompanied by other regulations tending to secure such an examination as will test the attainments of the applicant.

2nd. It is suggested that it would be an important improvement on the present mode of appointing examining committees for each occasion, to have a permanent committee, each member to have charge of the examination on special subjects. The members of such a committee would thus have a fair opportunity to make the examination systematic and thorough. As all applications for license in the County or District would be passed on by the same committee, the feeling of their responsibility would be increased. They would not be able to say that it was useless to be rigid, for that the next case would be referred to a different committee with different views. The suggestion is not new. In New Hampshire, under the operation of rules of court, a committee of three, so arranged that one member is to be appointed each year, conduct examinations partly by written questions and answers, and partly orally. Originally, the committee received no compensation, but now they receive \$30 or \$40 per year, according to the convenience of their place of residence to the place of examination. The procedure is described in detail in a letter of W. M. Chase, a member of such a committee, published in

the proceedings of the American Bar Association, &c., for 1881, p. 246. He winds up thus :

"The committee are of the opinion that the effect of the change in the manner of examining students, has been beneficial to the profession and to the public; students of law are now studying law instead of loafing about offices. We are going to have better lawyers, better read lawyers."

In Delaware the rules of court provide for the appointment annually, in each county, of a Board of Examiners of not less than three nor more than five. Proceedings American Bar Association, 1881, p. 246, et seq.

Several prominent lawyers, whose letters are published in those proceedings, favor a permanent Examining Board. See pp. 252, 270. Says Mr. Albert T. McNeal of Tennessee : "There should be in each State some fixed, permanent and responsible Board of Examiners, either to examine in person, or pass upon the examination made by others." *Ib.*, p. 286.

3rd. It is believed that a properly organized and conducted Law School affords the best facilities for the study of law. It may be open to question whether the student devoting three years to preparation, might not most profitably spend one of those years in the office of some practicing lawyer, but it can hardly admit of doubt that in the other two years he will study to best advantage in a Law School conducted by lawyers whose business it is to guide and aid him, and where he is in daily contact with fellow students pursuing the same studies. Nor will it be questioned that a completely organized Law School should offer facilities for students desiring to do so, to extend their studies to other systems than the Common Law, to the Civil or Roman Law, and to comparative jurisprudence. Your committee suggest that the organization of the Law Department of the University of Texas cannot be regarded as complete until it is provided with a sufficient number of instructors to enable it, by a post-graduate course or otherwise, to meet the wants of the most ambitious student.

ROBERT S. GOULD,  
J. W. ROBERTSON,  
W. AUBREY. Committee.

I concur in the foregoing report, except the last item which declares that law schools afford the best facilities for the study of the law, and which suggests that the Law Department of our State University should be provided with additional instructors.

Without reflecting in the least upon the Law Department of the University of Texas, I am compelled to say that in my judgment the law office is superior to any law school in educating and developing the members of our profession. I cannot better express my views than to quote from a recent letter of Senator George F. Edmunds, in which he says :

"The average lawyer turned out of the 'law schools' is running down the bar, I think, pretty fast. There is now, indeed, wide room for courage, talent, and learning at the bar ; and that room will be chiefly filled, as it has been, by men who, in poverty and want, but with brave, pure hearts and high purpose, come in through the patient drudgery and ardent labors of a working law office."

J. O. TERRELL, One of the Committee.

The next business in order was the further consideration of the report of the special committee on the Judiciary Article—HON. E. G. BOWER, of Dallas, in the chair.

Section 7—*Appellate Jurisdiction*.—After various unsuccessful motions to amend, and substitutes therefor, this section was, upon motion of HON. SETH SHEPARD, referred to a special committee of seven, with a request that they report thereon as early as possible.

The President appointed the following as said committee: W. P. BALLINGER, A. CHESLEY, F. CHAS. HUME, T. J. BEALL, SETH SHEPARD, M. D. HERRING and JNO. A. GREEN.

The consideration of the report of the special committee on Judiciary was resumed.

Sections 8, 9, 10, 11 and 12 were adopted.

Section 13 was amended by striking out the words "in two," and inserting in lieu thereof the word "into."

Sections 14, 15, 16, and 17, with some few amendments to section 16, were adopted as reported by the committee.

Major JNO. A. GREEN, a member of the special committee appointed to draft a proposed amendment to the Judiciary Article, made the following minority report:

*Hon. A. J. Peeler, President, and Members of the Texas Bar Association :*

The undersigned has had no opportunity to meet with other members of the committee heretofore appointed to prepare a draft of an amendment to the Judiciary Article of the State Constitution, until on the eve of the present meeting of the Association, and therefore was not present when the report made by the committee was agreed to and prepared. At the meeting of the Association which took place at Austin last year, the undersigned had prepared a proposed draft upon the subject referred to the committee, so far as concerns that part of the Judiciary Article relating to the higher courts, which will be found on pages 35-39 of the Proceedings of the Bar Association at its meeting in 1885. After mature reflection, he has seen no cause to change his views, and therefore he dissents from the report of the majority of the committee, so far as it relates to the provision for the higher courts, and begs to submit the draft proposed by him to the Association as a substitute for the report of the majority.

JNO. A. GREEN,  
One of the Committee.

Major GREEN being called for, addressed the Association in explanation of and in behalf of his report.

President PEELER in the chair.

Hon. A. W. WATTS, President of the Dallas Bar Association, on behalf of the members of the Dallas Bar, invited the members of the Association to a banquet, to be prepared for them at the Grand Windsor Hotel to-night at 10 o'clock.

On motion of E. G. BOWER, Esq., the Association adjourned until 3 o'clock p. m.

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### *SECOND DAY—EVENING SESSION.*

The President called the Association to order at 3 o'clock.

The special committee to whom was referred section 7, made their report and offered the following amendment:

Strike out all after the word "probate," and insert "there shall be no appeal to the Supreme Court of civil cases originating in the justices' courts. There shall be no appeal to the Supreme Court of civil cases originating in the county court, except in cases involving a construction of the Constitution, and in such other cases as may be provided by law."

On motion, the amendment was unanimously adopted, and section 7, as thus amended, was adopted.

Sections 18 to 57, inclusive, were, with some few amendments, adopted as reported by the committee.

On motion to adopt the entire article, as amended, Hon. CHAS. I. EVANS moved, as a substitute, that the minority report of the committee presented by Major JNO. A. GREEN, be made the special order for to-morrow morning at 10 o'clock.

The original motion was withdrawn, and Mr. EVANS' substitute, being then offered as an original motion, was adopted; and, on further motion, the Association adjourned until to-morrow morning at 10 o'clock.



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*THIRD DAY—MORNING SESSION.*

THURSDAY MORNING, July 15, 1886.

President PEELER called the Association to order at 10 o'clock.

Quorum present. Upon motion, reading of the minutes was dispensed with.

The Board of Directors reported favorably upon the application of R. D. COUGHANOUR, Esq., of Dallas, for membership, and on motion the applicant was duly elected a member of the Association.

The special order for this morning being the consideration of the minority report relating to the higher courts, presented by the Hon. JOHN A. GREEN, the same was called up, and Major GREEN spoke in behalf of his report.

F. H. PRENDERGAST, Esq., favored the adoption of the minority report.

Mr. EVANS moved to substitute the minority for the majority report.

Gov. ROBERTS spoke at length against the motion.

The previous question moved by A. M. CARTER, Esq., not being duly seconded, W. B. WRIGHT, of Dallas, asked the Association to first hear Major GREEN, not only as a courtesy, but as a matter of right.

Major GREEN, at the urgent request of the members, addressed the Association at some length.

E. G. BOWER suggested that both the substitute and the original be adopted, so far as that both be presented to the next State Convention, with a request that said Convention demand of the Legislature a change in the present Judiciary Article, and that both the majority and minority reports be presented to the Legislature in hopes that if we could not get the one, we might get the other—either of them being preferable to the one under which we now live.

Judge MCKAY then spoke in favor of the minority report.

W. S. SIMKINS, Esq., moved to adopt the minority report. Motion lost.

The amendment, as proposed by the majority of the committee, was then adopted as a whole.

CHAS. I. EVANS, Esq., moved that the committee to be appointed by this Association to present the proposed amendment to the Legislature, be authorized and requested to present the minority report, in case of failure or refusal of the Legislature to favorably consider the proposed amendment adopted by this Association.

A. M. CARTER, Esq., opposed the motion for the reason that if it should appear to the Legislature that the members of the Bar Association could not positively unite on any one article, the Legislature itself would not be apt to take any notice of it.

Hon. SETH SHEPARD made the point of order that the minority report having been defeated, and the majority report adopted, said minority report could not be considered.

Hon. O. M. ROBERTS and Judge JOHN L. HENRY, spoke against the motion, and Judge A. T. WATTS in its favor.

H. G. ROBERTSON, Esq., moved, as a substitute, that the report only of the majority as adopted by this Association, be presented to the Legislature. The substitute was adopted.

A. M. CARTER, Esq., moved that a committee of ten be appointed to present the said majority report to the Legislature. Motion adopted and the President appointed the following committee: O. M. ROBERTS, R. S. GOULD, Sr., B. H. BASSETT, JOHN HANCOCK, J. B. RECTOR, JOHN S. WOODS, I. N. ROACH, F. H. PRENDERGAST, SAM R. FISHER and JOHN W. ROBERTSON.

T. S. MAXEY, Esq., called up the resolution proposed in the report of the Committee on Judicial Administration and Remedial Procedure, which was as follows:

*Resolved, by the Texas Bar Association,* That the Supreme Court be requested at its earliest convenience to amend the rules of said court so as to require, under such restrictions and limitations as they may deem proper—looking to economy and accuracy in the work—the printing of all records filed therein.

*Resolved further,* That the President of the Association be instructed to transmit immediately after the adjournment of this meeting, to each member of said court, a duly certified copy of these resolutions.

Gov. ROBERTS suggested to the committee an amendment, to the effect that the Supreme Court shall in all cases, where they deem it necessary, require the printing of transcripts.

T. J. BEALL, Esq., moved that that portion of the report of the

Committee on Jurisprudence and Law Reform, referring to this same subject be considered in connection with this resolution.

The question arose as to whether the Supreme Court had, or would exercise power to order the printing of transcripts, or whether that power was vested in the Legislature.

Doubt being expressed upon the subject, Hon. T. S. MAXEY moved that the question of printing transcripts be referred to the Legislature.

Hon. T. J. BEALL moved that a committee of five be appointed to memorialize the Legislature to carry out the provisions contained in the report of the Committee on Jurisprudence and Law Reform.

Mr. MAXEY moved, as an amendment, that both reports, in so far as they relate to the printing of transcripts, be referred to the Legislature. Amendment accepted and motion adopted.

The following resolution, also proposed by the Committee on Judicial Administration and Remedial Procedure, was adopted:

*Resolved, by the Texas Bar Association*, First, That the Legislature at its next ensuing session, be requested and respectfully urged to provide for the printing and publication of the following laws:

1. Constitution and Laws of the State of Coahuila and Texas.
2. The Ordinances and Decrees of the Consultation of the Provisional Government of Texas, including the Declaration of Texan Independence, and the Constitution of the Republic.
3. The Laws, General and Special, of the Republic and State of Texas from 1836 to 1876, both inclusive.
4. An English translation of the Constitution of Tamaulipas of 1825, and the laws enacted thereunder by said State up to the 4th July, 1848.

Second. That a committee of five be appointed by the President to present these resolutions to the appropriate committees of the next Legislature.

The President appointed the following committee in both cases: T. S. MAXEY, C. C. GARRETT, FRED CARLETON, R. G. WEST and WILLIAM AUBREY.

The report of the Committee on Judicial Administration and Remedial Procedure was then adopted as a whole, as was also the report of the Committee on Jurisprudence and Law Reform.

An election of officers for the ensuing year was then gone into, and resulted in the selection of the following:

THOS. J. BEALL, of Fort Worth, President,  
F. H. PRENDERGAST, of Marshall, Vice President,  
CHAS. S. MORSE, of Austin, Secretary,  
ROBT. G. WEST, of Austin, Treasurer.

The following gentlemen were elected as delegates to the National Bar Association :

SAWNIE ROBERTSON, O. M. ROBERTS, L. C. ALEXANDER and CHAS. CULBERSON.

The President then appointed the following Committee on Publication :

L. C. ALEXANDER, W. S. SIMKINS, T. S. MAXEY, F. G. MORRIS and THOS. D. DODD.

On motion of Hon. SETH SHEPARD, the Committee on Publication were instructed *not* to have published the stenographic reports of this meeting, nor the debates had upon the various amendments.

The amendment to the Constitution, proposed at the last annual meeting, fixing the time and place of each annual meeting to be at Lampasas, Texas, on the 2nd Tuesday in July of each year, was defeated.

On motion of F. H. PRENDERGAST, the time for the next annual meeting was fixed for the second Tuesday in July, 1887.

Hon. JNO. G. WINTER then addressed the Association in behalf of the members of the Waco Bar, and invited the Association to hold its next annual meeting at the city of Waco.

On motion, the invitation was unanimously accepted.

The Board of Directors reported favorably on the application of GEO. H. PLOWMAN, of Dallas, and on motion he was unanimously elected a member of this Association.

A. M. CARTER, Esq., moved that the thanks of this Association be tendered the local Bar of Dallas, for the courteous treatment received at their hands.

Motion adopted by a rising vote.

On motion of Hon. B. H. BASSETT, the Association adjourned, to meet again at Waco, on the second Tuesday in July, 1887.

CHAS. S. MORSE, Secretary.

# THE BANQUET

COMPLIMENTARY TO THE TEXAS BAR ASSOCIATION

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GIVEN UNDER THE AUSPICES OF THE DALLAS BAR.

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## TOASTS.

1. THE STATE BAR ASSOCIATION :

Responded to by F. H. PRENDERGAST, Esq.

2.<sup>1</sup> THE SUPREME COURT:

Responded to by Hon. SAWNIE ROBERTSON.

3. STARE DECISIS:

Responded to by Hon. O. M. ROBERTS.

4. THE LAWYER'S RELATION TO THE PEOPLE:

Responded to by Hon. JOHN HANCOCK.

5. CONSTITUTIONAL LIMITATIONS ON LEGISLATION:

Responded to by Hon. B. H. BASSETT.

6. THE RAILROAD LAWYER:

Responded to by Hon. THOS. J. BEALL.

7. THE JURY SYSTEM:

Responded to by Hon. A. J. PEELER.

8. THE ETHICS OF OUR PROFESSION:

Responded to by Hon. F. CHAS. HUME.

9. THE PINEY WOODS LAWYER OF THE OLDEN TIME;

Responded to by HECK MCKAY, Esq.

10. THE LADIES, GOD BLESS 'EM!

Responded to by Hon. C. B. KILGORE.

11. THE JUNIOR BAR:

Responded to by N. W. FINLEY, Esq.

## OFFICERS AND COMMITTEES.

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|                        |                             |             |
|------------------------|-----------------------------|-------------|
| T. J. BEALL.....       | <i>President</i> .....      | Fort Worth. |
| F. H. PRENDERGAST..... | <i>Vice President</i> ..... | Marshall.   |
| CHAS. S. MORSE.....    | <i>Secretary</i> .....      | Austin.     |
| ROBT. G. WEST.....     | <i>Treasurer</i> .....      | Austin.     |

### DIRECTORS.

|                      |             |
|----------------------|-------------|
| T. J. Beall.....     | Fort Worth. |
| Jno. L. Henry.....   | Dallas.     |
| L. C. Alexander..... | Waco.       |
| B. H. Bassett .....  | Brenham.    |
| F. Chas. Hume.....   | Galveston.  |

### *Committee on Jurisprudence and Law Reform.*

|                      |            |
|----------------------|------------|
| O. M. Roberts.....   | Austin.    |
| Frank B. Sexton..... | Colorado.  |
| H. O. Head.....      | Sherman.   |
| W. M. Flournoy.....  | Waco.      |
| Jo. Abbott.....      | Hillsboro. |

### *Committee on Judicial Administration and Remedial Procedure.*

|                     |             |
|---------------------|-------------|
| John B. Rector..... | Austin.     |
| Henry C. Coke.....  | Dallas.     |
| W. D. Wood.....     | San Marcos. |
| Henry Sayles.....   | Abilene.    |
| A. W. DeBerry.....  | Fort Worth. |

### *Committee on Legal Education and Admission to the Bar.*

|                    |               |
|--------------------|---------------|
| John Sayles.....   | Abilene.      |
| M. D. Herring..... | Waco.         |
| W. P. McLean.....  | Mt. Pleasant. |
| M. F. Mott.....    | Galveston.    |
| William Croft..... | Corsicana.    |

*Committee on Commercial Law.*

|                         |              |
|-------------------------|--------------|
| James A. Baker, Jr..... | Houston.     |
| R. C. Beale.....        | Corsicana.   |
| F. G. Morris.....       | Austin.      |
| John A. Green.....      | San Antonio. |
| J. A. Carroll.....      | Denton.      |

*Committee on Grievances and Discipline.*

|                      |              |
|----------------------|--------------|
| R. S. Gould, Sr..... | Austin.      |
| W. P. Ballinger..... | Galveston.   |
| A. J. Peeler.....    | Austin.      |
| George Clark.....    | Waco.        |
| Jacob Wælder.....    | San Antonio. |

*Committee of Three on Deceased Members.*

|                                        |            |
|----------------------------------------|------------|
| John D. Templeton.....                 | Austin.    |
| Geo. T. Todd.....                      | Jefferson. |
| Chas. S. Morse, <i>Secretary</i> ..... | Austin.    |

*Committee on Publication.*

|                      |         |
|----------------------|---------|
| L. C. Alexander..... | Waco.   |
| W. S. Simkins.....   | Dallas. |
| T. S. Maxey.....     | Austin. |
| F. G. Morris.....    | Austin. |
| Thos. D. Dodd.....   | Laredo. |

*Delegates to National Bar Association.*

|                         |            |
|-------------------------|------------|
| Sawnie Robertson.....   | Dallas.    |
| O. M. Roberts.....      | Austin.    |
| L. C. Alexander.....    | Waco.      |
| Chas. A. Culberson..... | Jefferson. |

[NOTE.—The President of the Association desires that the Chairman of each committee put himself in communication at once with each member of his committee, and that each committee begin without delay to prepare the material for a report. The selection of the committees has been made with the expectation and belief that each member of each committee will not only discharge the full measure of his duty in making a report, but that he will be personally present at the next annual meeting.]

# ROLL OF MEMBERS.

|                          |             |                         |               |
|--------------------------|-------------|-------------------------|---------------|
| Abbott, Jo.....          | Hillsboro   | Carr, J. S.....         | San Antonio   |
| Acker, Walter.....       | Lampasas    | Carter, A. M.....       | Fort Worth    |
| Alexander, L. C.....     | Waco        | Carter, Champe.....     | Calvert       |
| Allen, W. H.....         | Terrel      | Cate, M. H.....         | Mineola       |
| Anderson, James M.....   | Waco        | Charlton, Wm.....       | Kaufman       |
| Andrews, A. W.....       | Terrell     | Chesley, A.....         | Bellville     |
| Andrews, R. W.....       | Big Springs | Clark, George.....      | Waco          |
| Antony, E. L.....        | Cameron     | Clark, W. H.....        | Dallas        |
| Archer, Osceola.....     | Austin      | Cleveland, C. L.....    | Galveston     |
| Atkinson, W. M.....      | Gonzales    | Coke, Henry C.....      | Dallas        |
| Atlee, E. A.....         | Laredo      | Conner, T. H.....       | Eastland      |
| Austin, Wm. J.....       | Denton      | Cooper, J. F.....       | Fort Worth    |
| Aubrey, Wm.....          | San Antonio | Copeland, John H.....   | San Antonio   |
| Autry, James L.....      | Corsicana   | Coughanour, R. D.....   | Dallas        |
|                          |             | Crain, W. H.....        | Hallettsville |
| Ballinger, W. P.....     | Galveston   | Crank, W. H.....        | Houston       |
| Baker, James A., sr..... | Houston     | Crawford, M. L.....     | Dallas        |
| Baker, James A., jr..... | Houston     | Crawford, W. L.....     | Dallas        |
| Bailey, W. J.....        | Fort Worth  | Croft, William.....     | Corsicana     |
| Ball, R. L.....          | Colorado    | Croom, J. L. jr.....    | Belton        |
| Barry, B. T.....         | Corsicana   | Culberson, Chas. A..... | Jefferson     |
| Bassett, B. H.....       | Brenham     | Cunningham, J. D.....   | Kaufman       |
| Battle, N. W.....        | Waco        |                         |               |
| Beall, T. J.....         | Fort Worth  | Davidson, R. V.....     | Galveston     |
| Bell, C. K.....          | Hamilton    | Davidson, W. L.....     | Richmond      |
| Bergstrom, O.....        | San Antonio | Davis, George W.....    | Galveston     |
| Bidwell, B. G.....       | Weatherford | Davis, L. B.....        | Cleburne      |
| Blair, T. A.....         | Waco        | DeArmond, R.....        | McKinney      |
| Blake, S. R.....         | Bellville   | DeBerry, A. W.....      | Ft. Worth     |
| Blanding, J. M.....      | Corsicana   | Delany, W. S.....       | Columbus      |
| Bledsoe, D. T.....       | Cleburne    | Dennis, Isaac N.....    | Wharton       |
| Botts, W. B.....         | Houston     | Denson, W. B.....       | Galveston     |
| Bower, E. G.....         | Dallas      | Devine, Thos. J.....    | San Antonio   |
| Bradley, L. D.....       | Fairfield   | Dickinson, E. C.....    | Rusk          |
| Bradshaw, C. J.....      | La Grange   | Dickson, Jos. M.....    | Dallas        |
| Bright, W. R.....        | Corsicana   | Dodd, Thos. D.....      | Laredo        |
| Brown, T. J.....         | Sherman     | Douglass, W. L.....     | Beaumont      |
| Brown, R. L.....         | Austin      | Dowell, John.....       | Austin        |
| Buetell, A. B.....       | Galveston   | Drought, H. P.....      | San Antonio   |
| Burgess, W. H.....       | Seguin      |                         |               |
| Burts, James H.....      | Austin      | Eaton, O. S.....        | Galveston     |
|                          |             | Edmonds, Elias.....     | San Antonio   |
| Callaghan, Bryan.....    | San Antonio | Edmunson, C.....        | Austin        |
| Campbell, A. R.....      | Galveston   | Elgin, John E.....      | Waco          |
| Carleton, Fred.....      | Austin      | Evans, Chas. I.....     | Abilene       |
| Carrington, W. A.....    | Houston     |                         |               |
| Carroll, J. A.....       | Denton      | Farrar, L. J.....       | Groesbeek     |
| Carraway, T. J.....      | Jasper      | Finlay, Geo. P.....     | Galveston     |



|                         |                |                         |              |
|-------------------------|----------------|-------------------------|--------------|
| Finley, N. W.....       | Tyler          | Harris, A. J.....       | Belton       |
| Fisher, A. S.....       | Georgetown     | Harrison, R. H.....     | Waco         |
| Fisher, Sam R.....      | Austin         | Harwood, T. M.....      | Gonzales     |
| Flournoy, W. M.....     | Waco           | Harwood, T. F.....      | Gonzales     |
| Fly, W. S.....          | Gonzales       | Head, H. O.....         | Sherman      |
| Foard, R. L.....        | Columbus       | Hefly, W. T.....        | Cameron      |
| Fontaine, Sidney T..... | Galveston      | Henderson, T. S.....    | Cameron      |
| Ford, T. W.....         | Jasper         | Henry, Jno. L.....      | Dallas       |
| Franklin, Joseph.....   | Galveston      | Herring, M. D.....      | Waco         |
| Franklin, R. M.....     | Galveston      | Hill, George L.....     | Gainesville  |
| Franklin, Thos. H.....  | San Antonio    | Hogan, W. A.....        | Indianola    |
| Freeman, G. R.....      | Hamilton       | Hogsett, J. V.....      | Fort Worth   |
| Frost, Sam R.....       | Corsicana      | Holmes, H. M.....       | Mason        |
| Fulmore, Z. T.....      | Austin         | Houston, A. W.....      | San Antonio  |
| Fulton, Marshall.....   | Denton         | l'ouston, Reagan.....   | San Antonio  |
| Gaines, W. P.....       | Austin         | Howard, Russell.....    | Floresville  |
| Gammage, T. T.....      | Palestine      | Hume, F. Charles.....   | Galveston    |
| Gano, W. B.....         | Dallas         | Hurt, J. M.....         | Dallas       |
| Gardner, B. H.....      | Fairfield      | Hutchings, R. M.....    | Galveston    |
| Garnett, M. W.....      | Houston        | Ivy, V. H.....          | Hillsboro    |
| Garrett, C. C.....      | Brenham        | Jack, D. M.....         | Galveston    |
| Garrett, N. P.....      | Cameron        | Jackson, A. M., sr..... | Austin       |
| Garrison, James L.....  | Henderson      | Jackson, A. M., jr..... | Austin       |
| Geer, M. R.....         | Marshall       | Jackson, Hugh.....      | Wallisville  |
| Gibbs, B.....           | Dallas         | Jennings, Hyde.....     | Fort Worth   |
| Gibson, James P.....    | Rusk           | Jerdone, W. M.....      | Galveston    |
| Giles, W. M.....        | Mineola        | John, A. S.....         | Beaumont     |
| Givens, John S.....     | Corpus Christi | Johnson, T. L.....      | Seguin       |
| Goldthwaite, Geo.....   | Houston        | Johnston, W. M.....     | Centreville  |
| Gooch, John Y.....      | Palestine      | Jones, S. W.....        | Galveston    |
| Goodrich, L. W.....     | Marlin         | Jones, C. Anson.....    | Houston      |
| Gordon, John A.....     | Decatur        | Joseph, Thomas M.....   | Galveston    |
| Gould, R. S., sr.....   | Austin         | Keaghey, John S.....    | Jasper       |
| Gould, R. S., jr.....   | Bryan          | Kennard, John R.....    | Anders on    |
| Grace, Charles D.....   | Bonham         | Kilgore, C. B.....      | Wills Point  |
| Graham, A. H.....       | Austin         | Kilgore, S. B.....      | Wills Point  |
| Graham, W. J.....       | Henderson      | Kincaid, W. A.....      | Groesbeek    |
| Greene, S. P.....       | Fort Worth     | Kirk, Lafayette.....    | Brenham      |
| Green, John A.....      | San Antonio    | Kirven, O. C.....       | Fairfield    |
| Green, N. O.....        | San Antonio    | Kittrell, N. G.....     | Centreville  |
| Greer, H. W.....        | Beaumont       | Kleberg, M. E.....      | Galveston    |
| Gresham, Walter.....    | Galveston      | Kleberg, Rudolph.....   | Cuero        |
| Grigsby, W. H.....      | Mobeetie       | Kone, Ed. R.....        | San Marcos   |
| Grimes, S. F.....       | Cuero          | Labatt, H. J.....       | Galveston    |
| Grothaus, L. C.....     | San Antonio    | Lane, E. R.....         | San Antonio  |
| Guinn, R. H.....        | Rusk           | Lane, John.....         | LaGrange     |
| Haggerty, J. J.....     | Bellville      | Lea, James V.....       | Cold Springs |
| Haidusek, A.....        | LaGrange       | Ledbetter, W. H.....    | LaGrange     |
| Hamblen, E. P.....      | Houston        | Leopold, Louis.....     | Galveston    |
| Haney, Jasper N.....    | Weatherford    | Lessing, W. H.....      | Ben Ficklin  |
| Hancock, John.....      | Austin         |                         |              |
| Harcourt, John T.....   | Weatherford    |                         |              |
| Hare, Silas.....        | Sherman        |                         |              |

|                           |                |                         |             |
|---------------------------|----------------|-------------------------|-------------|
| Levi, Leo N.....          | Galveston      | Ochse, J. E.....        | San Antonio |
| Lewis, Everett .....      | Gonzales       | Owsley, Alvin C.....    | Denton      |
| Lightfoot, H. W.....      | Paris          |                         |             |
| Lockett, C. C.....        | Caldwell       | Padelford, S. C.....    | Cleburne    |
| Looney, F. B.....         | Butler         | Paschal, George.....    | San Antonio |
| Looscan, M.....           | Houston        | Pearson, P. E.....      | Richmond    |
| Lovejoy, John.....        | Galveston      | Peeler, A. J.....       | Austin      |
| Lumpkin, S. H.....        | Meridian       | Perkins, E. B.....      | Greenville  |
| Lyle, Richard .....       | Belton         | Phelps, R. H.....       | LaGrange    |
|                           |                | Plowman, Geo. H.....    | Dallas      |
| Mann, H. K.....           | Galveston      | Ponton, T. J.....       | Gonzales    |
| Mantooth, Edwin J.....    | Homer          | Pope, A.....            | Marshall    |
| Marr, D. P.....           | Pearsall       | Pope, W. H.....         | Marshall    |
| Martin, Thomas P.....     | Fort Worth     | Porter, R. C.....       | Dallas      |
| Masterson, B. T.....      | Galveston      | Porter, R. L.....       | Greenville  |
| Masterson, James.....     | Houston        | Potter, C. L.....       | Gainesville |
| Mason, George.....        | Galveston      | Prather, William L..... | Waco        |
| Mason, J. R.....          | San Antonio    | Prendergast, H. D.....  | Austin      |
| Matlock, A. L.....        | Montague       | Prendergast, F. H.....  | Marshall    |
| Mayfield, C. H.....       | San Antonio    | Priest, M. D.....       | Fort Worth  |
| Maxey, T. S.....          | Austin         | Proctor, D. C.....      | Cuero       |
| McC Campbell, John S..... | Corpus Christi |                         |             |
| McComb, John E.....       | Montgomery     | Quinan, George.....     | Wharton     |
| McCormick, George.....    | Columbus       |                         |             |
| McCoy, John C.....        | Dallas         | Rainey, Anson.....      | Waxahachie  |
| McDonald, W. L.....       | Dallas         | Randle, E. B.....       | Brenham     |
| McFarland, J. B.....      | Brenham        | Read, F. N.....         | Corsicana   |
| McKay, H.....             | Jefferson      | Reaves, S. D.....       | Tyler       |
| McKie, W. J.....          | Corsicana      | Rector, John B.....     | Austin      |
| McKinnon, A. P.....       | Hillsboro      | Rector, N. A.....       | Giddings    |
| McKinnon, Neill L.....    | Schulenburg    | Reese, T. S.....        | Hempstead   |
| McLean, W. P.....         | Mount Pleasant | Rhodes, H. W.....       | Galveston   |
| McLeary, J. H.....        | San Antonio    | Roach, I. N.....        | Weatherford |
| McLemore, M. C.....       | Galveston      | Roberts, J. C.....      | Fairfield   |
| McNeal, Thomas.....       | Luling         | Roberts, O. M.....      | Austin      |
| Melven, H. S.....         | Seymour        | Robertson, John W.....  | Austin      |
| Mills, A. M.....          | Galveston      | Robertson, H. G.....    | Tyler       |
| Miller, James F.....      | Gonzales       | Robertson, Sawnie.....  | Dallas      |
| Miller, T. S.....         | Dallas         | Robinson, C. S.....     | San Antonio |
| Minor, F. D.....          | Galveston      | Robson, W. S.....       | LaGrange    |
| Minyard, W. M.....        | Dallas         | Rogers, R. E.....       | Fort Worth  |
| Mitchell, J. M.....       | Houston        | Rose, Forster.....      | Galveston   |
| Moore, John W.....        | Albany         | Russell, D. L.....      | Belton      |
| Moore, W. F.....          | Austin         | Russell, L. B.....      | Refugio     |
| Morgan, Richard, jr.....  | Dallas         | Russell, T. J.....      | Beaumont    |
| Morris, F. G.....         | Austin         |                         |             |
| Mott, M. F.....           | Galveston      | Sampson, Alex.....      | Galveston   |
| Murphy, J. B.....         | Corpus Christi | Saunders, X. B.....     | Belton      |
|                           |                | Sayers, J. D.....       | Bastrop     |
| Neblett, R. S.....        | Corsicana      | Sayles, John.....       | Abilene     |
| Newton, S. G.....         | San Antonio    | Sayles, Henry.....      | Abilene     |
| Noble, S. B.....          | Galveston      | Scott, B. R. A.....     | Galveston   |
| Oliver, W. C.....         | Houston        | Scott, J. Z. H.....     | Galveston   |
| O'Brien, Geo. W.....      | Beaumont       | Scott, J. C.....        | Fort Worth  |
| O'Neil, J. M.....         | Fort Worth     |                         |             |

|                        |             |                         |             |
|------------------------|-------------|-------------------------|-------------|
| Scott, D. H.....       | Paris       | Templeton, John D.....  | Austin      |
| Searcy, I. G.....      | Austin      | Terhune, E. W.....      | Greenville  |
| Searcy, W. W.....      | Brenham     | Terrell, A. W.....      | Austin      |
| Sebastian, W. P.....   | Cisco       | Terrell, J. O.....      | Terrell     |
| Sexton, Frank B.....   | Colorado    | Terry, J. W.....        | Galveston   |
| Shaw, W. N.....        | Houston     | Thomson, T. A.....      | Austin      |
| Sheeks, James D.....   | Austin      | Thompson, Wells.....    | Columbus    |
| Shelley, N. G.....     | Austin      | Todd, C. S.....         | Boston      |
| Shepard, Seth.....     | Dallas      | Todd, George T.....     | Jefferson   |
| Shewalter, W.....      | Laredo      | Trezevant, L. E.....    | Galveston   |
| Shropshire, E. L.....  | Comanche    | Tucker, Chas. Fred..... | Dallas      |
| Shropshire, B. D.....  | Comanche    | Tucker, Philip C.....   | Galveston   |
| Simkins, E. J.....     | Dallas      | Upson, C.....           | San Antonio |
| Simkins, W. S.....     | Dallas      | Vernor, Henry E.....    | San Antonio |
| Simpson, Isaac P.....  | San Antonio | Waelder, Jacob.....     | San Antonio |
| Simpson, French.....   | Columbus    | Walker, A. S.....       | Austin      |
| Simpson, J. B.....     | Dallas      | Walker, John C.....     | Galveston   |
| Sims, M. L.....        | Clarksville | Walker, Richard S.....  | Nacogdoches |
| Sinks, Ed. R.....      | Giddings    | Walker, R. C.....       | Austin      |
| Smith, Tilman.....     | Gleburne    | Wallace, W. R.....      | Castroville |
| Smith, Geo. W.....     | Colorado    | Walling, W. W.....      | San Antonio |
| Solomon, E. E.....     | Wallisville | Walthall, L. N.....     | San Antonio |
| Sparkman, L. C.....    | Decatur     | Walton, W. M.....       | Austin      |
| Spence, W.....         | Dallas      | Ward, P. H.....         | San Antonio |
| Spencer, F. M.....     | Galveston   | Watts, A. T.....        | Dallas      |
| Spivy, W. W.....       | Henderson   | Waul, T. N.....         | Galveston   |
| Spooner, T. H.....     | Gonzales    | Webb, W. G.....         | Houston     |
| Stayton, John W.....   | Victoria    | West, R. G.....         | Austin      |
| Stayton, Robert W..... | Victoria    | West, S. P.....         | Woodville   |
| Steadman, William..... | Marshall    | Wheeler, R. T.....      | Galveston   |
| Stephens, John H.....  | Montague    | White, Alex.....        | Dallas      |
| Stewart, Joe H.....    | Austin      | White, John P.....      | Austin      |
| Stockdale, F. S.....   | Cuero       | Whitehead, J. P. C..... | Austin      |
| Storey, L. J.....      | Lockhart    | Whitman, M. J.....      | Rusk        |
| Stout, J. F.....       | Corsicana   | Wilkes, F. D.....       | Lampasas    |
| Street, Robert G.....  | Galveston   | Wilkins, W. W.....      | Sherman     |
| Stubbs, James B.....   | Galveston   | Willett, G. B.....      | Austin      |
| Styles, Cary W.....    | Glen Rose   | Williams, Eugene.....   | Waco        |
| Swain, W. J.....       | Austin      | Williams, W. D.....     | Austin      |
| Swan, A. K.....        | Henrietta   | Willie, A. H.....       | Galveston   |
| Swearingen, J. T.....  | Brenham     | Wilson, J. H.....       | Galveston   |
| Taliaferro, S.....     | Houston     | Wilson, W. L.....       | Galveston   |
| Tarleton, B. D.....    | Hillsboro   | Willson, Sam A.....     | Austin      |
| Taylor, L. N.....      | Ruunels     | Willson, Sam P.....     | Rusk        |
|                        |             | Winter, Jno. G.....     | Waco        |
|                        |             | Wood, W. D.....         | San Marcos  |
|                        |             | Woods, John S.....      | Kaufman     |
|                        |             | Woodward, W. H.....     | Indianola   |
|                        |             | Wooten, Dudley G.....   | Austin      |
|                        |             | Wright, W. B.....       | Dallas      |
|                        |             | Wynne, R. M.....        | Fort Worth  |

### DECEASED MEMBERS.

ADAMS, Z. T., Kaufman. Died January 9, 1836.  
 BONNER, M. H., Tyler. Died November 25, 1883.  
 FRISBIE, W. H., Groesbeck. Died September 12, 1882.  
 GOSLING, H. L., Castroville. Died February 21, 1885.  
 LANGUILLE, P. T., Galveston. Died October 14, 1882.  
 LOGUE, L. J., Columbus. Died May 15, 1884.  
 MOORE, GEORGE F., Austin. Died August 30, 1883.  
 PECK, L. L., Fairfield. Died May 30, 1885.  
 READ, N. C., Corsicana. Died October 25, 1884.  
 RUCKER, W. T., Belton. Died August 10, 1885.  
 TIMMONS, B., LaGrange. Died June 17, 1884.  
 WEST, C. S., Austin. Died October 23, 1885.

# OPENING ‡ ADDRESS

OF

## HON. A. J. PEELER,

PRESIDENT OF THE TEXAS BAR ASSOCIATION.

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*Gentlemen of the Texas Bar Association:*

With the hope of offering something of practical value, I prepared and caused to be generally circulated among the judges, lawyers and officers of the courts throughout the State, certain questions relating to our judicial system, and of vital concern to the administration of justice. I shall now lay before you the result of these inquiries, venturing to add, in some instances, my own researches and conclusions. The first question was :

*"1. Are you satisfied with the judiciary article of the Constitution? If not, and you favor material changes, can such changes, in your opinion, be as well accomplished by proposed amendments through the Legislature as by a Constitutional Convention?"*

To the first part of this question the response has been universally in the negative, and in this connection a review of the history of this article, and the unsuccessful attempt to amend it, may be of interest. In the Convention of 1875, by which it was adopted, the vote stood 47 yeas to 30 nays; and among the latter were such lawyers as Judge Ballinger, of Galveston; John L. Henry, of Tyler, but now of this city; Major B. H. Davis, of Bryan, now of El Paso; Ex-Governor F. S. Stockdale, of Indianola, and the late lamented Judge C. S. West, of Austin. In his first message to the Legislature after the adoption of the Constitution, Gov. Coke, referring to the necessity of amending certain parts of that instrument, uses this language :

"Prominent among these is that portion of the Constitution known as the judiciary article. Of the many questions and measures discussed before the people, and upon which the public mind was exercised before the late Constitutional Convention, not one was so little understood or excited so great a diversity of opinion as the

reorganization of the judiciary. That a necessity existed for some change in the old system was generally agreed; but in what respect it should be changed, how the reform should be made, there was a general disagreement. Public sentiment was not crystallized upon any plan of reorganization when the Convention met; there were nearly as many opinions on the subject as there were members. The subject was placed in charge of a committee composed mainly of the ablest legal minds in the State, who, after wrestling with it for many weeks, and finding it impossible to agree, permitted a report of an article in which it is believed none of them concurred, which, with some slight changes made by the Convention, is the article on that subject now found in the Constitution. There is believed to be a general concurrence of opinion among the bench and bar of the State, that this article should be radically changed, and a general desire and expectation with the people that it be done at once. Submitted separately and on its own merit, it is confidently believed that it would have been overwhelmingly voted down. To it may be traced almost exclusively the opposition made to the Constitution, while the most earnest advocates of the instrument generally admitted that it should be thoroughly amended. Public sentiment, in every mode by which it can be reached without injury to the remainder of the instrument, has condemned it and demanded that it be reformed; nor is this deep and widespread dissatisfaction without ample cause."

In the adoption of the Constitution the vote stood, for, 136,606; against, 56,652. In this large minority may be counted many of the ablest and best citizens in and out of the profession, who voted in the negative solely because of their uncompromising opposition to the judiciary article. Gov. Hubbard, in his message to the Sixteenth Legislature, after pointing out some of the more serious difficulties found in the practical working of the system, urged the adoption of such constitutional amendments as would secure a more efficient and speedy administration of justice. Having in view particularly the clogged condition of the Supreme Court docket, he says:

"I recommend to your honorable bodies the adoption of no temporary expedient, but, in its stead, a plain, adequate and permanent remedy. If three Supreme Judges are unable to dispatch the business of the court, as is certainly the case, we cannot hope that the coming years will witness a decrease of business. Let us then add a number sufficient for the purpose, constituting the court of five, or seven, or even nine judges, with power to so organize at each term as to be able to dispatch business pending at that term. The details of this, or any other method of relief is within the discretion of your honorable bodies, as is, indeed, the method itself; but my desire is to impress upon you, I again repeat it, the necessity of early relief. The interest of the people ought not to

be permitted longer to suffer sacrifice in this matter, and the State will be indeed derelict in its duty, and will not fulfill the purpose of government, if it permits this state of affairs longer to continue. I invoke your earnest and patriotic attention to it."

In his inaugural address before the Legislature, Gov. Roberts referred to the necessity of amending the Constitution so as to remodel, or at least improve, the judicial department, which, he states, was generally conceded to be inadequate to the wants of the country. And in a special message to the same body, he submitted, for the purpose of emphasizing the importance of prompt action, the outlines of a plan for reorganization. In this message he says :

"At the last session of the Legislature there was a strong sentiment, on the part of many persons, that the judicial system adopted in the Constitution of 1876 was very defective. Subsequent experience has verified the accuracy of their judgment."

Nothing was done at this session, but at the extra session of the same Legislature, in 1879, as a temporary expedient, a law was passed creating the Commissioners of Appeals, which was subsequently amended February 8, 1881, upon the recommendation of Gov. Roberts, so as to give the Supreme Court and Court of Appeals, without waiting for the consent of parties, authority to refer causes to this new tribunal.

On March 14, 1881, the Seventeenth Legislature adopted, by the necessary two-thirds, a joint resolution proposing amendments to Sections 2, 3, 5, 6, 8 and 17 of the judiciary article, which will be found on page 128 of the published laws of the regular session. These amendments were voted on September 6, 1881, at the same time the election was held for the location of the State University. The vote stood, for, 20,149; against, 36,647. The total vote for governor at the election November 5, 1880, was 264,204, and yet, at an election involving important changes, of vital concern to every citizen, in the organic law, only about *one-fifth* of the voters went to the polls. It might serve a useful purpose, if time permitted, to consider (first) the cause of this apathy, and (second) the cause of defeat. If the amendments possessed virtue, they were entitled to the active support of the two thousand lawyers in Texas. It was their duty, above all others, to explain and interest the people in the matter.

If, on the other hand, they were objectionable, it was equally their duty to enlighten the people on the subject and contribute to their defeat. We are forced to the conclusion that in this instance the profession went to sleep upon its post, and we indulge the hope that, to the credit of the Bar, no such instance of dereliction of duty will occur again. Apart from apathy, the immediate cause of defeat has been attributed to the provision that the Supreme Court should sit at the Capital and at two other places, *or at the Capital only*, if the Legislature should so provide. Making it possible to

relieve the Court of its itinerating feature and locate it at the seat of government, naturally arrayed against the amendments such local and other influences as could be exerted to perpetuate the system of branching established by the Constitution. It may be observed, before dismissing the subject, that the main features of these amendments consisted in taking from the Court of Appeals jurisdiction in civil cases, and in the organization of a Supreme Court composed of a Chief Justice and seven judges, to be formed into two divisions, the Chief Justice to co-operate with either section.

In his inaugural address before the Eighteenth Legislature, Gov. Ireland asks the question:

"Shall we amend our Constitution so as to enable us to have a judiciary equal to our demands, or shall we continue to multiply judges of courts of last resort?" He adds: "A little reflection will satisfy all that the evil in the system is radical, and we must begin the remedy in the trial courts."

And in his first message to the same Legislature, he recommends a trial court, to consist of two judges, and the dispensing with juries in a large number of cases. With this change he thinks we could do without several of the inferior courts, and appeals being allowed upon a division of opinion between the judges of the trial court, he is of opinion that three judges could dispose of all civil appeals. His central idea seems to be that the change, which should be radical, must begin in the trial courts; otherwise we will be called upon constantly to increase the number of appellate judges.

This Association, which held its first meeting in 1882, after the defeat of the amendment proposed by the Seventeenth Legislature, took up the work of reform. An able committee carefully prepared a joint resolution covering the entire judiciary article, which will be found in the Texas Law Reporter of January, 1883. This was submitted to the Eighteenth Legislature, but in spite of the earnest efforts of able members of that body, neither the resolution reported by the committee nor any other looking to a reform of the judiciary was adopted. The Association renewed its efforts before the Nineteenth Legislature, but nothing came of it; and now, after the lapse of nearly ten years, we are struggling under the same difficulties encountered from the beginning under the Constitution of 1876—not even aided by the temporary expedient of the Commissioners of Appeals.

Appreciating our high responsibilities and true to our mission, we determined not to let the matter rest. At the meeting in San Antonio, in 1884, a committee, consisting of ex-Chief Justice Roberts and Messrs. B. H. Bassett and John A. Green, was appointed to draft an amendment to the judiciary article. An amendment, carefully prepared by Mr. Green, will be found printed

with the Proceedings of the Fourth Annual Session, held in Austin, May, 1885. At that meeting the committee, consisting of Judge Roberts and Messrs. Green and Bassett, were given time to report at this meeting, and Messrs. Z. T. Adams, John Hancock, John S. Woods, I. N. Roach, John B. Rector and Judge R. S. Gould were added to the committee. This committee, after a most laborious and faithful discharge of its duty, has prepared a joint resolution proposing an amendment to Article V, designed to present a complete judicial system.

This able document has been printed, and generally distributed among the members of the profession; and its consideration will justly occupy much of our time and command our best attention. And here I may be permitted to say that in what I have done in the way of endeavoring to ascertain the sense of the bench and bar upon the same subject, my purpose has been, not to anticipate, supplant, or in any manner thwart the work of the committee, but rather to aid in the accomplishment of what must be to us all a common object—the securing of a judicial system which, if not perfect or acceptable to every one, will in the main commend itself to the bench, bar and people of the State.

As to the manner of changing the Constitution, a small majority think this can be accomplished as well through the Legislature as by a convention. Many strong reasons, however, are urged why a convention should be called, and it is evident that those favoring this mode are influenced in no small degree by what they regard as a failure of duty on the part of the Legislature, and a still greater failure of duty on the part of the people, in taking no interest in special elections to change the organic law. I have already directed your attention to the fact that, at such an election, a few years ago, not more than one-fifth of the voters went to the polls. Some think abler men would go to a convention, and that better and more thorough work might be expected from such hands than from the average Legislature. My own opinion is that if this Association will discharge, as I doubt not it will do, the full measure of its duty in this matter, the twentieth Legislature, which meets in 1887, will propose amendments which will be adopted. Even then, and with the utmost expedition, we cannot, under the requirements of the Constitution, derive any benefit from them until about January, 1888.

*"2. Do you favor two courts of last resort, one for civil and one for criminal appeals? If so, what should be the number of judges for the Civil Court of Appeals?"*

A large majority of those answering this question favor *two* courts of last resort, the one for criminal appeals to be divested of all civil jurisdiction—the Supreme Court or court of civil appeals to be composed of five, seven or nine judges. Some suggest the



leaving of the number of judges open, so that the Legislature may increase from time to time, as the exigencies of the business may require. A majority would have but three judges for the Court of Appeals, though not a few think the number should be increased to five.

Those advocating but *one* court would divide it into sections, assigning to one section the criminal business. They insist that this would give greater dignity to the court of ultimate resort, and the better secure uniformity of decision.

The salaries to be paid the judges of the higher courts range all the way from \$5000 to \$7500, the greater number favoring \$5000. All seem to regard the present salaries inadequate.

Most of them would increase the tenure of office to eight, ten or fifteen years, and some to life or during good behavior. An examination of the Constitutions of the different States will show that three of them provide for a life tenure; one for a tenure of twenty-one years; one for fifteen, one for fourteen, four for twelve, two for ten, three for nine, five for eight, two for seven, nine for six, one for five, and one for two years. In the Constitutions of three States it is provided that a judge must be retired when he attains the age of seventy years.

*"3. What plan do you suggest for more speedily disposing of civil appeals? Would you increase the number of judges, or re-establish the Commissioners of Appeals?"*

Very few favor the re-establishment of the Commissioners of Appeals. Many speak in just and high terms of the valuable services rendered by the distinguished lawyers who have filled this position; but, regarding it as a mere expedient, they want something more permanent. In view of the accumulation of business in the two higher courts, some urge the restoration of the Commissioners, until a constitutional amendment can take effect. It has been further suggested that their decision should be final, unless an application for rehearing be made, in which case only, the same should be reviewed.

That we might have accurate ideas of the state of business in the higher courts, I applied to and was kindly furnished by the clerks of these courts with statements showing the condition of their dockets at their last Tyler, Galveston and Austin terms. Supreme Court, Tyler term—cases on docket, 154; cases decided with written opinions, 111; without written opinions, 14; motions decided, 20; cases left undecided, 9. Supreme Court, Galveston term—cases on docket, 185; cases decided with written opinions, 134; without written opinions, 13; motions decided, 72; cases left undecided, 38. Supreme Court, Austin term—cases on docket, 486; cases decided with written opinions, 133; without written opinions, 37; motions decided, 171; cases left undecided, 316. Court of

Appeals, Tyler term—cases on docket, 266; cases decided with written opinions, 156; without written opinions, 110; motions decided, 87; cases left undecided, none. Court of Appeals, Austin term—cases on docket, 559; cases decided with written opinions, 137; without written opinions, 235; motions decided, 173; cases left undecided, 15. Court of Appeals, Galveston term—cases on docket, 238; cases decided with written opinions, 145; without written opinions, 93; motions decided, 86; cases left undecided, none.

If we make no deduction for the time necessarily lost in getting the court started at each place, we have from the first Monday in October, 1885, to the last Saturday in June, 1886, about 225 working days. From the statement just made it will be seen that the Supreme Court, apart from the time taken up in holding sessions and hearing arguments, has averaged nearly two opinions a day, to say nothing of the cases decided without written opinions, or of the 263 motions, the latter being often of the most complicated character, requiring much consideration.

The Court of Appeals has considerably exceeded this, and taking the two courts together, the result, while highly creditable to the industry of these courts, reflects upon the system which overworks judges and forces them to run a race where time and deliberation should alone be expected. The judgments of these important tribunals finally passing upon the life, liberty and property of the citizens, are of too great value to be hastily constructed.

*“4. Do you favor intermediate courts of appeal for civil cases? If so, how many of such courts would you have; in what parts of the State; of how many judges composed; their salary?” etc.*

With few exceptions, the establishment of such courts meets with decided opposition. One writer suggests that they be composed of district judges, and that four courts be established, with power in the Legislature to increase the number.

*“5. Are you satisfied with the organization and jurisdiction of the district and county courts?”*

Very general dissatisfaction is expressed with the organization and jurisdiction of these courts. A great many would restrict the county court to probate business. Some would abolish it entirely, and have but one court in each county with general jurisdiction. Section 22, of Article V. of the Constitution, which gives the Legislature power to increase, diminish or change the civil or criminal jurisdiction of the county courts, is complained of in one instance, because it enables the Legislature to work great injustice in certain sections of the State. The rule, it is said, is to diminish rather than to increase the jurisdiction. Those who would retain the

county courts condemn, in strong terms, the want of qualification in the judges as permitted by the present law, as well as the receipt of fees or perquisites as a part of their compensation. A respectable salary, fixed by law, and not dependent upon a commissioners' court, is generally recommended. With reference to the salary of district judges, none place the amount lower than \$3500, and not a few would make it \$4500. As to tenure of office, some favor appointment for life and some for terms of years, as in case of supreme judges.

While, in the main, no dissatisfaction is expressed with the election from the State at large of judges of the higher courts, it has been earnestly contended that the judges of the district courts should be appointed by the Governor and confirmed by the Senate, thus removing them as far as possible from the influence of local surroundings and popular clamor.

Many defects have been pointed out in the jurisdiction of the district court, which can only be remedied by making it a court of general jurisdiction, competent to take cognizance of any and all cases of every character whatsoever, of which jurisdiction is not expressly given to another court.

*"6. Do you favor separate trial courts for civil and criminal cases?"*

The answers to this question are about equally divided. Very little objection seems to be made to such separate courts for cities and populous counties. Some would have but one court, but would provide for separate terms for the trial of civil and criminal cases. Others, instead of having separate terms, would assign separate periods during the term for the trial of civil and criminal cases.

*"7. Do you favor dispensing with juries in civil cases, in whole or in part; or if in part, with respect to what character of cases would you retain juries?"*

This question has provoked earnest and, in some instances, elaborate responses. Only about one-third would wholly dispense with juries in civil cases. A few would dispense with them in all civil cases except personal damage suits, etc. A large majority desire to preserve the right of trial by jury in all cases where it is not waived by the parties, and favor the passage of laws to elevate the standard of jurors. As a substitute for juries, three judges, selected from different counties in the district, have been suggested, two to concur in a judgment. It is said that the administration of justice by such a tribunal will not only be more efficient and satisfactory, but infinitely more economical, and to a very great extent do away with repeated mistrials, new trials and appeals, fruitful

sources of delay and expense. Some who would retain juries would restrict the jury to the finding, not for plaintiff or defendant, but of special issues of fact, leaving it to the judge to render judgment thereon. An opinion is expressed that if juries were dispensed with in civil cases, a County Court, except perhaps for probate business, would be unnecessary.

*"8. What changes can be made to secure a more efficient, prompt and, at the same time, economical administration of justice in the district and county courts?"*

The answers to this question have taken a wide range. I will note a few : It is said parties ought to be made to try after a first continuance ; that plaintiff and defendant should pay costs in advance, and cost bonds be abolished ; that all dilatory motions should be disposed of before jury is called ; that no venire should be summoned in a criminal case until announcement of ready for trial ; that no amendment should be allowed after demurrer sustained, except on paying fee of ten dollars ; that continuances should be applied for on first day of term, and on calling of appearance docket ; that district attorneys should be appointed and be removable by the Governor ; that new terms of district court should begin every month, except July, August and September ; that citation should not issue, and parties should be allowed to have their processes served by any one competent to do so ; that power of trial courts to force litigants to try should be enlarged ; that evidence should be taken before examiner ; that court, in its discretion, should be allowed to tax attorneys' fees against losing party ; that defendant should be allowed to testify in criminal cases ; that statement of facts should be made up before parties move for new trial ; that the law should be argued and charge of court written before discussion of facts ; that docket should be set and witnesses summoned to attend only on particular days ; that officers should get salaries instead of fees ; that appearance day should be first day of term, thus avoiding procrastination ; that process should be served ten days before court ; that number of continuances by consent should be limited ; that in criminal cases, where witnesses live one hundred and fifty miles from court, their depositions should be taken unless the State or defendant pay actual expense of attendance ; that grand jury should be abolished ; that county judges should be required to give bond ; that it should be made a misdemeanor for any person to ask a sheriff to put him on the jury, and sheriff should be punished for complying with such request ; that where jury find verdict of guilty, judge should assess punishment ; that in actions *ex contractu* defendant should swear to his plea, so as to avoid delay and sham defenses.

*"9. Do you favor the enactment of a Code of Criminal Procedure, retaining the essential features of our present practice, with such alterations, additions and amendments as will secure a harmonious system; in other words, a code which will bear to civil matters the same relation that our Code of Criminal Procedure bears to criminal matters?"*

From the answers to this question, though some strongly urge the enactment of such a code, giving many good reasons therefor, it seems not to be generally favored. The arguments presented on the subject of codification by Mr. Justice Miller, of the Supreme Court of the United States; Judge Cooley and Mr. Weatherbe, in the May-June number of the American Law Review, 1886, are worthy of an attentive examination. Personally, I think, such a code, prepared by able and experienced lawyers, though meeting with some opposition at first, would soon be received with general favor, and retained for its intrinsic value and convenience.

Detached independent pieces of legislation by different legislatures, passed without keeping in view the whole law and practice, cannot in the nature of things be moulded into a harmonious system. A code judiciously framed would cut off excrescences and supply many missing links. In this way alone can we expect to correct the evils we suffer, chief among which are prolixity, confusion as to the real issue, vexatious and unwarrantable delays and consequent expense.

*"10. Can you suggest any needed alterations or amendments to the Rules of Practice for the Supreme and District Courts?"*

The present rules, though satisfactory to the majority, are severely criticised in some quarters and a preference expressed for the old practice. It is contended by some that the court should decide cases on the assignment of errors, and not on the brief of counsel, and that a cause should not be prejudiced by reason of a failure to conform to the rules. The effect of the rules, it is said, is to take away from counsel the discretion which legitimately belongs to them in the presentation of cases—in other words, that the rules in this respect are arbitrary, artificial and unreasonable. It has been suggested, among other amendments, that transcripts exceeding a certain number of pages, should be printed, and that a mandate should be taken out within a year after decision. A further suggestion has been made that the court should decide cases, except where entitled to precedence, under the statute, in the order in which they stand on the docket.

The Constitution (Art. V, Sec. 25), provides: "The Supreme Court shall have power to make rules and regulations for the government of said court and the other courts of the State, to regulate proceedings and expedite the dispatch of business therein."

In the first judiciary article introduced in the Convention of

1875, no authority was given the Supreme Court to make rules. (Jour. 95.) This article was referred to the Judiciary Committee. In the report of the majority of the committee the provision of the Constitution above quoted appears as Sec. 22. (Jour. 413.) The constitutional provision is repeated in the Revised Statutes, Art. 1014.

Speaking through Mr. Chief Justice Roberts, the court, in *Texas Land Co. vs. Williams*, 48 Tex., 602, say: "The members of the Convention in giving the Supreme Court the power to make rules and regulations, for the express purpose of regulating the proceedings and expediting the business in the courts, must have designed more than the making of a few short rules of court, such as have formerly been made and practiced under. In the performance of this duty, the court has kept in view the statutes and previous decisions of this court, and have sought to regulate the order and mode of proceeding in suits under them, so as that the points of controversy in judicial proceedings in all the courts should be presented with distinctness and certainty, the want of which, under our present practice, produces delay, expense and injustice in litigation, that have long been increasing from year to year, until they now amount to intolerable evils that must be remedied. The rules of the District Court and of the Supreme Court are shaped with reference to each other, and are designed to establish a connected system of judicial procedure, from the petition filed in the District or County Court to the final judgment in the Supreme Court or in the Court of Appeals.'"

And at the same term, Mr. Justice Moore, speaking for the Court, in *Haley vs. Davidson*, 48 Texas, 615, says: "The difficulty under which counsel seem to labor, in properly apprehending the rules recently adopted and promulgated by the court, and in conforming to their requirements in the preparation of briefs under them, induces me to make the following observations, with the hope that they may, in some degree, tend to aid in the more ready and just apprehension of their scope and intent, thereby rendering a conformity to their requirements more easy in practice. As is obvious to every attorney of this court, it is utterly beyond the ability of the court, under the present system and rules of practice, to keep pace with the accruing business, much less bring up the arrearages of former terms. The delay in the decision of cases pending in the court for the past three or four years is, even now, almost tantamount to a denial of justice; and unless some remedy can be found, and the business dispatched more rapidly, it will soon be a debatable question whether it would not be better for the court to be entirely abolished. An increase in the number of the judges would probably, to some extent, facilitate the dispatch of the business, but evidently this would prove a mere palliation, and not a cure, for the evil. A limitation upon the right of appeal seems not to accord

with popular sentiment. The Legislature does not appear inclined to make any radical change in the present mode of bringing cases to this court. The convention, however, conferred upon this court authority to make rules and regulations for the government of this and the other courts of the State, to regulate proceedings, and expedite the dispatch of business. In the exercise of this authority, the court has, speaking of the matter now in hand, endeavored to form rules regulating the presentation of cases which, while they would deprive litigants of no right conferred upon them by the statutes, or conflict in any way with our appellate system, it is hoped and believed will enable us to dispatch the business of the court. This, however, I frankly say to the bar, can, in my opinion, only be accomplished by requiring of them a large amount of labor which has heretofore been performed, often imperfectly, by the court."

As to the effect of the rules promulgated under the constitutional provision above set forth, it will hardly be questioned, where they do not conflict with the law, they ought to be held as binding as legislative enactments. Rules not resting upon constitutional authority, but made in pursuance of statute, have been so regarded. *Seymour vs. Phillips, etc.*, Co. 7 Biss; 460; *Scott vs. The Young American*, Newb. Adm. 107; *The Delaware, Olcott*, 240; *Hanson vs. McCue*, 43 Cal. 178; *David vs. Aetna Ins. Co.*, 9; *Iowa* 45; *Coyote Gold etc. Co. vs. Ruble*, 9 Or, 121.

"11. *Can you suggest any way by which the costs and expenses of litigation can be diminished, without impairing the efficiency of the courts?"*

"12. *Can you make any suggestion, not covered by the foregoing, tending, in your opinion, to improve the administration of justice in this State?"*

Responses to these questions have been for the most part covered by answers to the preceding. Liberal salaries for district and county attorneys are strongly urged. Some advocate the holding of two terms of the Supreme Court, and the publishing in advance of a list of all cases to be tried.

I have referred to the printing of transcripts in another place. There is no doubt that with printed transcripts, each judge having a copy, the court could dispatch a great deal more business. The labor of wading through often illegible manuscripts of several hundred pages, by each judge at a different time, or of having all the judges present at its reading, is not only drudgery of the most irksome character, but a waste of valuable time.

One writer thinks that oral arguments should not be had in the higher courts unless invited by the court itself. Another insists that the privilege of appeal should only be allowed in certain

cases where the constitutionality of a law, etc., is involved, or where the amount in controversy exceeds a certain sum. The permanent location of the higher courts at the seat of government is advocated by some, though the majority express no opinion upon the subject. It is insisted that by making up the issues in all cases ten or twenty days before the term of the court, and placing cases on the trial docket only when they are to be tried, would be a great saving of time.

It is suggested that a jury fee of not less than ten dollars should be deposited by the party demanding the same, and that the county should under no circumstances pay the expense of juries in civil cases; that the demand for juries should be endorsed by plaintiff on his petition, and by defendant on his first pleading, otherwise the case should stand permanently as a non-jury case; that the judge should sum up evidence; that no appeal should be taken upon the general record, but by bills of exception; that the party should deposit witness fees, and the court should have the power of compelling attendance of witnesses; that all petit juries should be composed of six persons, and no more; that grand juries should be composed of the same number, and should serve for twelve months; that there should be but one justice of the peace in a county, who should visit and hold court in each precinct every sixty days; that witnesses and lawyers should not be called from the courthouse, but should be in attendance; that no amendment to pleadings should be allowed, on the eve of trial, that would cause a continuance; that juries should receive no fees for services, but should have their meals and lodging, the object being to make it an honor to serve on the jury, and to get rid of professionals; that cost bills should be made up and amount thereof stated in the judgment; that defendant in felony cases should have the right to waive a jury; that stenographic reporters should be appointed for each district; that all motions and dilatory pleas should be filed the first day of term, and if not called up and disposed of in the order in which they stand on the docket, to be deemed waived; that party applying for a continuance should be required to state, under oath, that he has a good cause of action or defense, and the facts he expects to prove by absent witnesses; that plaintiffs in land suits should file abstract of title twenty days, and defendant five days, before first day of term; that a docket fee of twenty dollars should be charged in all cases; that the mode of taking the depositions of witnesses should be simplified; that the judgments of lower courts should not be reversed on matters of fact, only on matters of law; that appeals should be allowed from orders granting new trials.

I could note many more suggestions, coming from judges, lawyers and officers of courts in different parts of the State, but time will not permit. But in bringing this part of my address to a close, I ask you to weigh carefully the views expressed, for perhaps some,



not seemingly important at first, may, upon more mature examination, impress you as worthy of adoption.

In the Constitutions of thirty States of the Union it is expressed that every person ought to have a certain remedy at law for all injuries to the person, property or character, and to obtain justice freely without being obliged to purchase it—complete without denial, promptly, and without delay. The principle of the Magna Charta, which forbids the denying or delaying to any person his right or justice, and of the laws passed in the reign of Edward I. that justice should not be deferred even though commanded by the Great Seal, and that judges should do equal law and execution of right to all, rich and poor, and without regard to any person, are principles very dear to the American people. All appreciate the fact that we have no greater interest in the government under which we live than the right administration of justice. To secure this we must have independent, fearless and able judges. No department is so sensibly the subverting influences of a false economy as the judiciary. With it, cheapness invariably proves in the end to be the dearest. Mode of selection, tenure of office, and compensation are prime considerations in securing good judges. A judge is not a *representative*; he represents no one. In the discharge of duty he should know neither State, county, city, neighborhood, creed, or partisanship, wealth nor poverty. He should be independent enough to declare a popular law unconstitutional, or to enforce an unpopular one. It is calculated to impair his efficiency to feel, as a consequence of his judgment, that he himself may soon be tried at a popular election. To remove a judge, therefore, as far as possible from popular control, from personal favoritism, nepotism and party-behests, is the highest wisdom. To get able judges, just salaries should be paid. The question is not how cheap we can get some one of respectable attainments to serve for, but *what we ought to pay*. We ought to pay enough to enable a judge to live decently, and, without embarrassment, to support himself and family, having in view the dignity of his station and consequent social surroundings. The poor and the weak should, above all others, favor good salaries. The able judge is their protection. The rich and powerful are able to employ the best talent at the bar. To withstand their learning and experience, to discriminate and dissect their masterly expositions so as to get at the very right of a cause, requires something more than mediocre ability. One mind, though equally honest, yields, though unconsciously, to a greater mind. If we turn from this to the business view of the subject, is it not singular that the State of Texas, representing all the people and all the wealth of the State, cannot compete with corporations and other interests in buying talent? I have already referred to the tenure of office in other States. Salary alone is not sufficient. No lawyer, fit for the place, would, even with a good salary, go on the bench for a short period.

A judge can engage in no other business. He practically sacrifices every other interest when he consecrates himself to the judicial office. His compensation is all he can look to, and, to be an inducement, his place should be made as permanent as possible.

With good judges, if defects exist and delays and miscarriages occur in the administration of justice, it is the fault of the system. If the system is hedged in by constitutional requirements and restrictions, these must be gotten rid of. And just here I wish to observe that I think it is a fault with the constitution builders of the present day, to leave too little to the Legislature; in other words, to make too inflexible a system. The judiciary provisions of the Constitution of the United States are exceedingly short and simple, and yet they have been found adequate to the wants of the people, notwithstanding our immense increase in population and wealth. Had that instrument undertaken to create all the courts, and define the jurisdiction of each, repeated changes would have been necessary. As it is, so far as I am advised, no change has been seriously urged, and we know that none has been made. In New Hampshire there is no constitutional provision creating courts, and in Massachusetts, Connecticut and New York full power is given to the Legislature to establish inferior courts, civil and criminal.

The great difficulty with which changes in the organic law are made, emphasizes the wisdom of not making it too much of a procrustean bed. Another thing to be borne in mind is that what would suit a small State, with a population of a few hundred thousand, may not be adapted to a great State of several millions, with an extensive territory and diversified interests like ours. In the construction of the judiciary, as well as the other departments of the government, attention must be paid to the situation, condition and habits of the people.

In concluding this address, and in severing, as I will soon do, my official relation to this body, I beg to thank you, one and all, for the honor conferred and the many courtesies received at your hands. I trust I may carry with me, and I ask no more, the recognition of an earnest effort to discharge duty by one who loves his profession and esteems it as the noblest among mankind.

ANNUAL ADDRESS

DELIVERED BEFORE THE

TEXAS BAR ASSOCIATION,

BY

HON. SAWNIE ROBERTSON.

ASSOCIATE JUSTICE OF THE SUPREME COURT.

*Mr. President and Gentlemen of the Association:*

I do not know what better response I can make to the invitation of your committee than to submit some reflections upon the death of chancery. Its parentage, birth, growth, career, long life and final dissolution cannot be treated in detail in the limits my appreciation of your time and patience imposes upon my discourse. The subject is peculiarly interesting to lawyers. It concerns at the same time the grandest effort the law has ever made to capture the principles of justice, and the most stubborn obstacle ever yet encountered in the progress of remedial science. A time comes early in the history of peoples when the sovereign cannot personally settle the disputes between his subjects. Agencies for this purpose are then created, and to secure uniformity in the expression in judicial decrees of the national customs and the ideas of right and wrong, forms of action and rules of proceeding are invented. These stiffen with age and become more rigid and technical with each step taken by the infant science. In the meantime, the relations of the subject are becoming more complex. Rights not recognized in the crude jurisprudence have grown past denial; causes arise which, when trimmed and padded to fit established forms, lose their identity—grievous wrongs go unredressed, because the case cannot be adjusted to the machinery of justice. At some time, not well defined in authentic history, this situation was realized in England and resulted in direct appeals to sovereign grace. The relief granted was informally fitted to the very case in hand. Appeals multiplied—enlightened grace was far more popular than straight-

jacket justice. History repeated itself. The King (Edward III.) had to delegate to his chancellor the power to grant relief in the cases not embraced in the spirit of the general laws as administered in established courts. The new court was the child of grace and arbitrary power. It was founded upon the idea that there was a power in the State superior to the laws of the land. This idea found little sustenance in English soil, and soon disappeared. But its seedling took roots of its own in the land of its origin, and grew and flourished, until its trunk was chipped around in the year of our Lord, one thousand eight hundred and seventy-three.

Equity is but an amendment of the English law. It failed to assume this shape and did not disappear with the causes contributing to its origin, because it was preserved in its fictitious form by a principle in Anglo-Saxon character more enduring than any theory involved in the progress of civilization. English-speaking peoples refuse to admit the errors of the past. They destroy nothing. The structures erected in their midst, though founded upon falsehood and composed of materials dissolved by the touch of newly developed but thoroughly established acids in political chemistry, are neither suddenly leveled nor completely abandoned. The progressive genius of the people eschews revolution. What is done is only undone by the destructive agencies of time. What is to be is added to what already is. The roof which shelters the present, in the architecture of the Anglo-Saxons, is always a combination of the best ancient methods with the best modern improvements. Progress, incontinently rejected as an abandonment of ancestral theories, is greedily welcomed as an addition to the past. A feature of Anglo-Saxon character is that we retrace no mistaken march. From the point at which an error is discovered a new route is taken. We recognize no leadership, scent no footsteps, but follow the forward instincts of our race from every point at which the needle develops a new variation. Among a people that love truth and hate falsehood, an unmitigated fiction, that there is a power in the State above the law, was preserved and fostered by the great race characteristic—abhorrence of sudden and radical changes, even in a matter so purely conventional as the procedure of courts. This feature in Anglo-Saxon character steadies the gait, prevents delays from retrogressions, and results in greater progress than would be obtained by the prevalence of changeful and revolutionary tendencies. But in persisting in building up this stupendous and unnatural system of jurisprudence, now deserted and decaying, there is presented to the student of this day a melancholy retrospect of wasted labor, distorted learning and unproductive genius. While we rejoice over the happy reunion of the currents of remedial justice, to broaden and deepen with occasion and flow on undivided forever, we cannot forget that the time and labor expended in constructing the channel of that useless and long diversion are com-

pletely lost, and that they add not a single unit to the final balance sheet of mortal endeavors.

Many years must elapse before the traces of the abolished distinction between law and equity entirely disappear from our reformed jurisprudence. A time will come when none but curious antiquarians rummaging in the rubbish of history, will know that there was once a useless and unintelligible difference between a legal and an equitable principle. But that time is far in the future. It cannot come until the contents of the two great reservoirs, in which the judicial wisdom of the past duly assorted is now collected, are drained into and indistinguishably mingled in a single receptacle of vast proportions, to be gradually formed in the administration of justice under the blended system. In the meanwhile the practical lawyer must derive his knowledge of enforceable rights and redressable wrongs from the old sources. We must still submit to hear of legal titles, and that equity will interpose in this case and not in that, but we will hear these things every year less frequently, and we may take comfort in the reflection that in a few generations our posterity will have a science of law purified from every taint of this ancient and venerable fiction.

For generations past there has been no intrinsic difference between law and equity. Instead of curing the defects of the common law as they were disclosed in the better lights of advancing civilization, by direct amendment, legislative or judicial, the amendments assumed and retained the form derived from their origin in royal grace and formed a separate system. Neither was complete without the other. The law was the leafless tree ; equity was, if its growth had not been distorted by fiction, its natural foliage. Equity was simply a body of new laws. Instead of harmonizing as one homogeneous whole, the unnatural and forced separation of the two parts of the same thing made any progress difficult, and uniform progress impossible. Union was the first unavoidable step in the direction of reform. In fact, this one step is what is left behind, and what is reached accomplishes everything. In blending the systems a compound is produced which instantaneously dissolves the forms of action, and relaxes the rigidity of principles, procedure and judgments of the common law.

The old action was as firmly established in America as it ever was in England, but to the new country belongs the honor of its first abolition. Mr. Pomeroy, in his learned and philosophical treatise upon "Remedies and Remedial Rights," ascribes this honor to the State of New York. New York abolished the distinction between law and equity in 1848, and in her code propounded many of the sequences of this leading idea. But three years before this, the lawyers and statesmen of the young and obscure Republic of Texas, with no cities in her border and no libraries in their reach, had conceived what Mr. Pomeroy appropriately denominates "The

American System," and in the organic law with which she entered the Union, her great *nisi prius* court was established and commanded to administer justice "without regard to any distinction between law and equity" (Sec. 10, Art. IV. of the Constitution of 1845). They went a step further and avoided some of the difficulties encountered in the practical operation of the New York code, by extending the right of trial by jury to equitable as well as law cases (Sec. 16, Art. IV). Thus, with us, the distinction was completely annihilated. The first Legislature of the new State inaugurated a common sense practice, in the principles of which there is not a trace of the old fiction. The same rule of pleading and the same method of trial were indiscriminately applied to all cases. Fortunately for the growth of the new system, there was no Selden among the early jurists of Texas. Her judges were in hearty sympathy with the new order of things, and our jurisprudence was hurried away from the old landmarks further than New York, or any of the twenty-one States and Territories following her enlightened leadership, has yet advanced.

To Texas belongs the credit of first escaping the traditions of the common law, and of originating in its simplest and most natural form the American system. It is true that the common law procedure was never in vogue here, but the people who won Texas independence, established the Republic, framed and introduced the State, who have made her history and always shaped her jurisprudence, were English-speaking descendants of Britons. The common, and not the civil law, was their heritage, and it was adopted as the law of the land; but upon it at the same time was engrafted the reformed procedure.

Texas was not only the first State to promulgate the American system, but she invented the expression of its leading idea. Equity has not been abrogated anywhere. This would have been a step backward as far as the middle ages. But the fictitious distinction between law and equity has been abolished. The courts are required to adjudicate controversies "without regard to any distinction between law and equity." The effect of the provision is to preserve every principle and remedy of equity, not as a separate jurisdiction or system, but in its natural form as an addition to and part of the law. Equity lives in the perfected spirit of the law, but chancery is no more. Those who fail to put it away, refuse to bury the dead. The first born of the union of law and equity is a new procedure, to be reared and trained upon modern principles to be the maid of justice. The object of having rules prescribing the procedure of courts, is to facilitate and dispatch the solution of controversies upon the merits. That is the best system which is most perfectly denuded of flounces, forms and ceremonies, and which presents and solves the naked issue. In the jurisprudence of the

future there is no room for technicality. The road to the merits will be made broad and smooth, and the little dealers in quips and fictions, trip-cords and small points, will be banished from the wayside. The plaintiff will be required to plead nothing except what is necessary to illustrate the right withheld or the wrong to be redressed—the facts from which the law, enlarged by the influx of equity, evolves a remedy. The answer should be required to state only the things which, if true, advise the court of the existence and nature of the defense. What should be settled in one suit, or be presented in two or more, and who are proper parties, ought to be determined in the blended system, without reference to the practice at law or in equity, upon the guiding principle of the reformed procedure—the speedy adjudication upon the merits of the controversy brought into court, untrammelled by obsolete precedents and artificial reasonings. These are the principles of the Texas system. They are free, enlightened and just. Their application in practice is yet fettered by the recollections of the past ; but as we leave further and further behind us the old procedure, the new will enlarge and adapt itself to the principles which abolished the old and produced and are now developing the new. Only by degrees will the practice escape ancient habits and conform to the advanced theory. A right angle is impossible in the line of Anglo-Saxon progress. We are turning to the true route, but, in obedience to the law of our race, we are describing in our march the arc of a circle. Here my discourse properly ends. I venture, however, a few remarks not wholly impertinent to my theme. The way opened to the advance of remedial science by blending law and equity, as yet is confined to the trial court. Our revisory procedure, though it dams the flow of justice, and in monotonous eddies sucks down the lives of renowned jurists, stagnates in the midst of universal progress.

This is a stigma upon the legal profession it behooves your association to remove. What is right and wrong is prescribed by a law all men are presumed to know. But how cases shall be presented in court, tried, appealed, and finally disposed of, is the lawyer's peculiar science. For the detection and correction of its faults and failures, the public and the State look to you. Eschew dissensions, immolate upon the altar of the general good all pet, peculiar ideas and schemes; unite upon a remedy; your suggestions in a province all your own have submitted to a ballot, and in spite of all diverting issues, and against the wail of demagogues, the people of Texas, in the exercise of that wisdom on which popular government is founded, will accept and approve your measures at the polls. I have had occasion during the past nine months, more than ever before, to understand and appreciate the excusing charity of my professional brethren in the State. My experience in that period has

taught me that the bar of Texas will approve, without criticising results, an honest and faithful effort to do a public service on the part of the humblest of its members. In submitting this address as a contribution to the proceedings of your honorable body, I pray the continuance of that quality in your judgment to which I acknowledge my past obligations.

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# MAJORITY REPORT

OF THE

## SPECIAL COMMITTEE ON JOINT RESOLUTION

*Proposing an Amendment to Article V, of the  
Constitution, as Amended and Adopted  
by the Association.*

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*Be it Resolved by the Legislature of the State of Texas, That  
Article V, of the Constitution of the State, shall be so amended as  
hereafter to read as follows, to-wit:*

### ARTICLE V.—JUDICIAL DEPARTMENT.

#### JUDICIAL POWER.

SECTION 1. The judicial power of this State shall be vested in a Supreme Court, in a Court of Appeals, in District Courts, and in such other inferior courts and magistrates as may be created by this Constitution or by the Legislature under its authority.

#### SUPREME COURT.

##### THE JUSTICES AND THEIR TERMS OF OFFICE.

SEC. 2. The Supreme Court shall consist of seven Justices, who shall be elected by the qualified voters of the State at a general election, and who shall hold their offices for the term of eight years from the date of their respective elections.

##### HOW CONSTITUTED.

SEC. 3. The Chief Justice and Associate Justices of the existing Supreme Court, or such of them as there may be, who shall be in office at the time when this amendment shall take effect, shall be Justices of the Supreme Court hereby established, and shall hold their said offices until the expiration of their respective terms under their former elections or appointments. Upon the adoption

of this amendment the Governor shall appoint the requisite number of additional Justices to constitute, with those above designated, a court of seven members. The Justices so appointed shall hold their offices until the next general election.

#### THE CHIEF JUSTICE.

SEC. 4. The Justices of the Supreme Court shall select from their own number a presiding officer, who shall be called the Chief Justice, and who shall hold for such term and perform such duties as may be prescribed by the court; *provided*, the Chief Justice who may be in office at the time when this amendment shall take effect, shall be the Chief Justice of the Supreme Court hereby established until the expiration of his term of office under his former election or appointment.

#### THEIR QUALIFICATIONS.

SEC. 5. Each Justice of the Supreme Court shall be a qualified voter, shall have arrived at the age of thirty years, and shall have been a practicing lawyer in this State, or a Judge of a District Court therein, or such judge and lawyer together, at least seven years at the time of his election or appointment.

#### THEIR SALARY.

SEC. 6. Each Justice of the Supreme Court shall receive an annual salary of not less than five thousand dollars.

#### APPELLATE JURISDICTION.

SEC. 7. The Supreme Court shall have, under such regulations as may be prescribed by law, appellate jurisdiction co-extensive with the limits of the State, of all final judgments rendered by the District Courts in civil cases originating in the District Court, and in all matters of probate. There shall be no appeal to the Supreme Court of civil cases originating in the justices' courts. There shall be no appeal to the Supreme Court of civil cases originating in the county court, except in cases involving a construction of the Constitution, and in such other cases as may be prescribed by law.

#### POWER TO ISSUE WRITS.

SEC. 8. The Supreme Court and the Justices thereof, shall have power to issue all such writs known to the law as may be necessary to the exercise of its jurisdiction or to enforce the same. They shall also have power, by mandamus or otherwise, to compel the District Courts to proceed with the trial of cases pending in said courts, of which the Supreme Court would have cognizance on appeal.

## POWER TO ASCERTAIN FACTS.

SEC. 9. The Supreme Court shall also have power, upon affidavit or otherwise as by the Court may be thought proper, to ascertain such matters of fact as may be necessary in the exercise of its jurisdiction.

## POWER TO MAKE RULES.

SEC. 10. The Supreme Court shall have power to make rules of procedure for its own government and the government of the other courts of the State; *provided*, such rules shall not be inconsistent with the laws of the State.

## CLERKS.

SEC. 11. The Supreme Court shall appoint a Clerk for each place at which it may sit, who shall hold his office for four years, subject to removal by the Court, and who shall give such bond as is or may be prescribed by law.

## TIME AND PLACE OF MEETING.

SEC. 12. The Supreme Court shall sit, for the transaction of business, from the first Monday in October to the last Saturday in June of every year, at the seat of Government, and at not more than two other places in the State, or at the seat of Government only if the Legislature shall hereafter so provide.

## AUTHORITY TO ORGANIZE IN DIVISIONS.

SEC. 13. The Supreme Court may, with the concurrence of not less than four of the Justices thereof, organize for the more speedy dispatch of business into divisions, each to consist of at least three of the Justices.

Each division shall have power to hear and determine such cases as may be assigned to it by the Court. When any member of a division fails to concur in the decision of a case, the case shall be referred back for decision to a quorum of the whole Court. No Justice shall be assigned permanently to either division, but the several Justices may alternate under such rules as a majority of the whole Court may prescribe. The Chief Justice may preside over either of said divisions, at his election, and a division over which he does not preside may select one of its own number to preside.

## COURT OF APPEALS.

## JUDGES OF, AND THEIR TERMS OF OFFICE.

SEC. 14. The Court of Appeals shall consist of three judges, who shall each be elected by the qualified voters of the State at a

general election, and who shall hold their offices for the term of eight years from the date of their respective elections. The Judges of the Court of Appeals, or so many of them as there may be, who shall be in office at the time when this amendment shall take effect, shall be Judges of said Court as hereby established, and shall hold their said offices until the expiration of their respective terms under their former elections or appointments. And should there be at the adoption of this amendment less than three Judges of said Court of Appeals, the Governor shall appoint the requisite number of additional Judges to constitute a court of three members, and the Judges so appointed shall hold their office until the next general election.

#### QUALIFICATIONS, SALARY, ETC.

SEC. 15. The several Judges of the Court of Appeals shall possess the same qualifications and receive the same salary as the Justices of the Supreme Court. The Judges shall select from their own number a Presiding Judge, who shall perform such duties and hold for such term as the Court may prescribe; a majority of the Court shall constitute a quorum, and the concurrence of two of the Judges shall be necessary to a decision. The Court shall sit at the same times and places as are prescribed for the Supreme Court. The Court and the Judges thereof, shall have power to issue the writ of *habeas corpus*, and all such other writs known to the law as may be necessary to the exercise of its jurisdiction or to enforce the same. They shall also have power, by mandamus or otherwise, to compel the District and County Courts to proceed with the trial of cases pending in said courts of which the Court of Appeals would have cognizance on appeal. The Court shall also have power to ascertain such facts as may be necessary in the exercise of its jurisdiction.

#### APPELLATE JURISDICTION.

SEC. 16. The Court of Appeals shall have appellate jurisdiction co-extensive with the limits of the State in criminal cases decided by the District and County Courts. In behalf of the defendant such jurisdiction shall extend to all criminal cases whatsoever; in behalf of the State its jurisdiction shall extend only to judgments in favor of the defendant, on exceptions to indictments and informations involving matters of substance and not amendable; *provided*, that proceedings had for the forfeiture of bail bonds and recognizances shall be treated as civil cases subject to the laws governing appeals in other civil cases.

#### CLERKS.

SEC. 17. The Court of Appeals shall appoint a Clerk for each

place at which it may sit, who shall hold his office for four years, subject to removal by the Court, and who shall give such bond as is or may be prescribed by law.

## DISTRICT COURTS.

### JUDICIAL DISTRICTS, TERMS, ETC.

SEC. 18. The State shall be divided into a convenient number of Judicial Districts, consisting of one or more counties. Regular terms of the court shall be held by the District Judges at the county seat of each county in the district at least twice in each year, in such manner as may be prescribed by law.

### JUDGES.

SEC. 19. There shall be a District Judge for each Judicial District, who shall be elected by the qualified voters of the district at a general election, or be appointed, as the Legislature may direct. He shall hold his office for the term of six years from the date of his election or appointment. The District Judges who may be in office when this amendment takes effect, shall hold their offices until the expiration of their several terms under the present Constitution and laws.

### THEIR QUALIFICATIONS.

SEC. 20. Each District Judge shall be a qualified voter, shall have arrived at the age of twenty-eight years, and shall have been a practicing lawyer in this State, or a judge of a court of record therein, or such judge and lawyer together, at least six years, and shall reside in his district during his term of office.

### THEIR SALARY.

SEC. 21. Each District Judge shall receive an annual salary of not less than three thousand six hundred dollars.

### ORIGINAL JURISDICTION.

SEC. 22. The District Courts shall be courts of general jurisdiction. They shall have original jurisdiction, both civil and criminal, of all causes and special proceedings of which exclusive jurisdiction is not conferred on some other court, and in civil cases such jurisdiction shall be exercised without regard to any distinction between law and equity. Contested elections and other special cases, where the right to resort to the courts arises only out of legislative action, may be referred by the Legislature to the District Court, or other tribunal, with or without the right of appeal to the Supreme Court, as may be provided by law.

## APPELLATE JURISDICTION.

SEC. 23. The District Court of each county shall have appellate jurisdiction and general supervision and control in civil cases, and in matters of probate over the County Court of such county, and over all inferior courts and tribunals in the county, under such regulations as are or may be prescribed by law.

## POWER TO ISSUE WRITS.

SEC. 24. The District Courts, and the Judges thereof, shall have power to issue the writ of *habeas corpus*, and to render judgment therein either in vacation or in term time. They shall also have power to issue *certiorari* and all other writs known to the law which may be necessary to the exercise of their jurisdiction or to enforce the same, and to issue writs of mandamus against the Commissioner of the General Land Office, returnable to the District Court at the seat of Government.

## SPECIAL TERMS.

SEC. 25. Any District Judge shall have power to hold a special term of the District Court in any county of his district, under such circumstances and in such manner as may be directed by general or special law.

## CLERK OF THE DISTRICT COURT.

SEC. 26. There shall be a Clerk of the District Court of each county, who shall be elected by the qualified voters of the county, and who shall hold his office for two years, whose duties, or salary, fees and perquisites shall be prescribed by law.

## PRESENT DISTRICTS TO REMAIN UNTIL, ETC.

SEC. 27. The Judicial Districts in this State, and the time of holding courts therein, shall remain as at present, until otherwise provided by law.

## CRIMINAL DISTRICT COURTS.

SEC. 28. The Criminal District Court of Galveston and Harris counties shall continue with the jurisdiction, organization and district now existing until otherwise provided by law; and the Legislature may establish such other courts, embracing one or more counties, with such criminal jurisdiction as may be provided by law. The qualifications and salaries and tenure of office of the judges of said courts shall be prescribed by law.

## OTHER CIVIL DISTRICT COURTS.

SEC. 29. The Legislature may also, when the public interest shall

require it, establish in any county other District Courts, having such civil jurisdiction as may be provided by law. The qualifications and salaries and tenure of office of the judges of such courts shall be prescribed by law.

#### GRAND JURIES.

SEC. 30. Grand Juries in the District and Criminal Courts shall be composed of not less than twelve nor more than eighteen men, who shall be selected in such mode, and whose powers and duties shall be such as may be prescribed by law. Twelve members of a grand jury shall be a quorum to transact business, and the concurrence of at least twelve members shall be necessary to the finding of a bill.

#### DISTRICT ATTORNEY.

SEC. 31. There shall be a District Attorney for each Judicial District, who shall be appointed by the Governor, by and with the advice and consent of the Senate, and who shall hold his office for the term of four years from the date of his appointment. He shall have arrived at the age of twenty-five years, and shall have been a practicing lawyer in this State, or a judge of a court of record therein, or such judge and lawyer together, at least four years. He shall receive a salary of two thousand five hundred dollars per annum, and such commissions and perquisites in civil cases in behalf of the State as the Legislature may provide, and shall have such powers and perform such duties as may be prescribed by law.

The District Attorneys who may be in office when this amendment takes effect, shall hold their offices until the expiration of their several terms under the present Constitution.

#### DISTRICT ATTORNEYS IN CRIMINAL DISTRICTS, ETC.

SEC. 32. When any Criminal District Court, now or hereafter created, shall embrace a portion only of a Judicial District, the Legislature shall make provision for the election of a District Attorney for such Criminal District, and may also in such case provide for the election of a District Attorney for so much of the Judicial District as is not embraced in the Criminal District, and prescribe his duties, powers and salary; or they may abolish the office of District Attorney for such Judicial District, and commit the duties of the office to the county attorneys of the proper counties, with such compensation as may be prescribed by law.

#### REMOVAL FROM OFFICE.

SEC. 33. District Attorneys may be removed by the Governor for good cause, and shall be removed on the address of the Legislature for like causes and in like manner as is prescribed for the removal of District Judges.

## COUNTY COURTS.

## COUNTY JUDGE.

SEC. 34. There shall be established in each county in this State a County Court, which shall be a court of record; and there shall be elected in each county, by the qualified voters thereof, a County Judge, who shall be a qualified voter; shall have been a practicing lawyer in this State, or a judge of a court of record, or such judge and lawyer together, at least four years, and shall hold his office for four years. He shall receive for his services such compensation as may be prescribed by law.

## ORIGINAL JURISDICTION.

SEC. 35. The County Court shall have exclusive original jurisdiction of all misdemeanors of which exclusive jurisdiction is not given to the justices' courts; *provided*, that misdemeanors involving official misconduct shall be tried by the District Courts. The County Court shall also have exclusive original jurisdiction in civil cases, without regard to any distinction between law and equity, where the matter in controversy shall exceed in value one hundred dollars, and shall not exceed five hundred dollars exclusive of interest. It shall also have jurisdiction to enter judgments *nisi* and final judgments in all criminal cases of which it has jurisdiction; but shall not have jurisdiction of suits in behalf of the State to recover penalties, forfeitures and escheats; of suits to recover damages for slander or defamation of character; of suits for divorce or of suits for the trial of title to land, or for the enforcement of liens thereon; *provided*, that in case of liens acquired by the levy of process issued out of the County Court, such court may foreclose the same by its judgment in the cause.

## APPELLATE JURISDICTION.

SEC. 36. The County Court shall have, under such regulations as are or may be prescribed by law, appellate jurisdiction in all criminal cases, of which the justices', mayors' and recorders' courts have original jurisdiction.

## PROBATE JURISDICTION.

SEC. 37. The County Courts shall also have general jurisdiction in all matters of probate, including the administration and settlement of estates, the appointment of guardians of minors, idiots, lunatics, persons *non compos mentis* and common drunkards, and the apprenticing of minors.

## POWER TO ISSUE WRITS.

SEC. 38. The County Courts and the judges thereof shall have



power to issue the writ of *habeas corpus* in cases where the offense charged is within the jurisdiction of said courts, or of the other inferior courts, and in other cases where persons are deprived of their liberty without being charged with any offense, and all such other writs, both civil and criminal, known to the law, as may be necessary to the exercise or enforcement of their jurisdiction.

#### TERMS, ETC.

SEC. 39. The County Court shall hold at least four terms for civil, probate and criminal business annually, as may be provided by the Legislature or by the Commissioners' Court of the county under authority of law, and such other terms for probate and criminal business, both or either, as may be fixed by the Commissioners' Courts; *provided*, the Commissioners' Court of any county, having fixed the times and number of terms of the County Court, shall not change the same again until the expiration of one year. Said court may dispose of probate business either in term time or vacation, under such regulations as may be prescribed by law. Prosecutions may be commenced in said courts in such manner as is or may be provided by law, and a jury therein shall consist of six men.

#### COUNTY CLERK.

SEC. 40. There shall be elected for each county by the qualified voters thereof, a County Clerk, who shall hold his office for two years, who shall be clerk of the County and Commissioners' Courts and the recorder of the county, and whose duties, salary or fees and perquisites shall be prescribed by law. In counties having a population of less than eight thousand, there shall be elected but one clerk, who shall perform the duties of both District and County Clerk.

#### NO JURISDICTION IN CERTAIN COUNTIES.

SEC. 41. Where in any county there shall be established a Criminal District Court, the County Court of such county shall not have criminal jurisdiction unless expressly conferred by law, and in such counties appeals from justices' courts and from other inferior courts and tribunals in criminal cases shall lie to the Criminal District Court, under such regulations as may be prescribed by law, and an appeal shall lie from such District Courts as in other cases.

#### COUNTY ATTORNEY.

SEC. 42. A County Attorney for each county shall be elected by the qualified voters thereof, who shall hold his office for two years, and who shall perform such duties and receive such compensation as the Legislature may prescribe.

## SHERIFF.

SEC. 43. There shall be elected by the qualified voters of each county a Sheriff, who shall hold his office for the term of two years, and whose duties, perquisites and fees of office shall be prescribed by law.

## COMMISSIONERS' COURT.

SEC. 44. It shall be the duty of the Commissioners' Court of each organized county to divide the same into not less than four commissioners' precincts, which may be changed from time to time. In each of such precincts there shall be elected by the qualified voters thereof one County Commissioner, who shall hold his office for the term of two years. The County Commissioners so chosen, with the County Judge, shall compose the County Commissioners' Court. The Commissioners' Court shall have such power and jurisdiction over all county business as is now or may hereafter be conferred by law.

## JUSTICES' COURTS.

## JUSTICES AND CONSTABLES ELECTED, ETC.

SEC. 45. It shall be the duty of the Commissioners' Court of each organized county to divide the same into a convenient number of justices' precincts, not less than four nor more than twelve, which may be changed from time to time. In each of such precincts there shall be elected by the qualified voters thereof one Justice of the Peace and one Constable, each of whom shall hold his office for two years, and shall perform such duties and receive such compensation as may be prescribed by law; *provided*, that in precincts including eight thousand or more inhabitants, there may be more than one justice of the peace, as may be prescribed by law.

## JURISDICTION, TERMS, ETC.

SEC. 46. The Justices' Courts shall have jurisdiction in criminal matters of all cases where the penalty or fine to be imposed may not exceed one hundred dollars, and in civil matters of all cases where the amount in controversy is one hundred dollars or less, exclusive of interest, of which exclusive original jurisdiction is not given to the District or County Courts, and such other jurisdiction, civil and criminal, as may be provided by law. They shall hold their courts at such times and places as may be provided by the Legislature, or by the Commissioners' Court under its authority. Justices of the Peace shall be ex-officio notaries public.

## MAYORS AND RECORDERS' COURTS.

SEC. 47. Mayors and recorders of cities and towns exercising under their charters judicial authority, shall have the criminal jurisdiction of a Justice of the Peace co-extensive with the corporate limits of such cities and towns.

## GENERAL PROVISIONS.

## DISQUALIFICATION OF JUDGES.

SEC. 48. No judge shall sit in any case wherein he may be interested in the question to be decided, or where either of the parties may be connected with him by affinity or consanguinity within such degree as may be prescribed by law, or where he shall have been of counsel in the case. When a Justice of the Supreme Court, or a Judge of the Court of Appeals shall be disqualified to hear and determine any case or cases in said Court, the same shall be certified by such Court to the Governor of the State, who shall immediately commission the requisite number of persons, learned in the law, for the trial and determination of said case or cases, which commission shall expire on the termination of such case or cases. When a Judge of the District Court is disqualified, the parties may by consent appoint a proper person to try the case, or upon their failure to do so, a competent person may be appointed by the Governor to try the case in the county where it is pending, in such manner as may be prescribed by law.

The District Judges may exchange districts, or hold courts for each other when they may deem it expedient, and shall do so when directed by law. The disqualification of judges of inferior tribunals shall be remedied as may be prescribed by law. The Legislature shall have power to provide for the holding of District and County Courts when the judges thereof may be absent, disabled or disqualified from acting.

## JUDGES TO BE CONSERVATORS OF THE PEACE.

SEC. 49. The judges of the several courts shall, by virtue of their offices, be conservators of the peace,

## STYLE OF WRITS, ETC.

SEC. 50. The style of all writs and process shall be "The State of Texas." All prosecutions shall be carried on in the name and by the authority of the "The State of Texas," and shall conclude, "Against the peace and dignity of the State."

## RIGHT OF TRIAL BY JURY.

SEC. 51. In the trial of all causes, with such exceptions in pro-

bate matters as the Legislature may provide, in the District and County Courts any party shall, upon application made in open court, have the right of trial by jury ; but no jury shall be empannelled in any civil case unless demanded by a party to the case, and a jury fee be paid by the party demanding the jury, in such sum and with such exceptions as may be prescribed by the Legislature.

#### JURY TRIALS.

SEC. 52. When, pending the trial of any case, one or more jurors, not exceeding three, may die or be disabled from sitting, the remainder of the jury shall have power to render the verdict ; *provided*, that the Legislature may change or modify the rule authorizing less than the whole number of the jury to render a verdict.

#### REMOVAL OF COUNTY OFFICERS.

SEC. 53. County Judges, Clerks of the District and County Courts, Sheriffs, Justices of the Peace, Constables and other county, precinct and municipal officers, after due notice, may be removed by the Judge of the District Court for incompetency, official misconduct, habitual drunkenness or other causes defined by law, upon the cause therefor being set forth in writing and the finding of its truth by a jury.

#### VACANCIES—HOW SUPPLIED.

SEC. 54. Vacancies in the offices of Justice of the Supreme Court, Judge of the Court of Appeals and District Judge shall be filled by the Governor until the next general election. Vacancies in the offices of Clerk of the District Court and Sheriff shall be filled by the District Judge for the unexpired term. Vacancies in the offices of County Commissioner, County Clerk, and County Attorney shall be filled by the County Judge for the unexpired term. Vacancies in all other county offices shall be filled by the Commissioners' Court of the county for the unexpired term.

#### TENURE OF OFFICE.

SEC. 55. All officers created by this article shall, except in case of death, removal or other disqualification, hold their office until their successors shall have duly qualified ; and all county officers who may be in office when this amendment shall take effect, shall hold their said offices until the expiration of their respective terms under the present Constitution and laws.

#### CAUSES TRANSFERRED, ETC.

SEC. 56. All causes pending in any of the courts at the time this amendment may take effect, of which exclusive jurisdiction is here-

by given to some other court, shall immediately be transferred to such other court, together with a certified copy of all the proceedings had in the case.

ABSENCE OR INABILITY TO ACT.

SEC. 57. In the event of the absence or inability to act of the District or County Attorney, Sheriff or Clerk, the presiding Judge may appoint temporarily a proper person to act in the place of the officer so absent or unable to act.

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# MINORITY REPORT

OF THE

## SPECIAL COMMITTEE ON PROPOSED AMENDMENTS TO THE JUDICIARY ARTICLE OF THE STATE CONSTITUTION,

OFFERED BY HON. JNO. A. GREEN.

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### ARTICLE V.—JUDICIAL DEPARTMENT.

#### JUDICIAL POWER.

SECTION 1. The judicial power of this State shall be vested in one Supreme Court, in Courts of Appeals, in District Courts, and in such other special courts and inferior courts as the Legislature may from time to time establish by law.

#### SUPREME COURT—THE JUSTICES AND THEIR TERMS OF OFFICE.

SEC. 2. The Supreme Court shall consist of five Justices, who shall be elected by the qualified voters of the State at a general election, and shall hold their offices for the term of ten years from the date of their election.

#### HOW CONSTITUTED.

SEC. 3. The Chief Justice and the Associate Justices of the Supreme Court who may be in office when this amendment goes into effect, together with a sufficient number to make the number of five, shall constitute the Supreme Court.

Upon the adoption of this amendment, the Governor shall appoint a sufficient number of Justices of the Supreme Court, in addition to those who may be in office at that time, to fill the number of five, who shall hold their offices until the next general election. The Justices of the Supreme Court, who may be in office when this amendment is adopted, shall continue to serve until their terms of

office will expire by the Constitution and laws under which they were elected.

#### THEIR QUALIFICATIONS.

SEC. 4. Each Justice of the Supreme Court shall be a qualified voter; shall have arrived at the age of thirty years, and shall have been a practicing lawyer in this State, or a judge of a District Court therein, or such judge and practicing lawyer, at least seven years at the time of his election or appointment.

#### THE CHIEF JUSTICE.

SEC. 5. The Justices of the Supreme Court shall select from their own number a presiding officer, who shall be called Chief Justice, who shall preside over the court for such time and perform such duties as may be prescribed by the Court.

#### SALARY.

SEC. 6. The Justices of the Supreme Court shall receive such salary as may be provided for by law; but their salaries shall not be increased or diminished during the time they shall hold their offices by virtue of their election.

#### QUORUM.

SEC. 7. A majority of the Justices of the Supreme Court shall constitute a quorum for the transaction of business. The concurrence of three Justices shall be necessary to the decision of a cause.

#### TIME AND PLACE OF MEETING.

SEC. 8. The Supreme Court shall sit at the seat of government for the transaction of business from the first Monday in October till the last Saturday of June of each year, unless the business before it shall have been sooner disposed of.

#### APPELLATE JURISDICTION.

SEC. 9. The Supreme Court shall have appellate jurisdiction of causes decided by the Courts of Appeals, whenever there may be a division in the opinion of such Courts of Appeals; of cases wherein two of the judges of such Courts of Appeals shall concur in certifying the same to the Supreme Court on account of the novelty or importance of the questions involved therein; of cases decided in the Courts of Appeals concerning the public revenue, including the revenue of municipalities or counties, and in cases concerning the public lands, where the State or county or municipality is a party, and also in such other causes decided by the Courts of Appeals.

d in such manner as the Legislature may from time to time prescribe.

#### POWER TO ISSUE WRITS.

SEC. 10. The Supreme Court shall have power to issue such writs as may be necessary to enforce the jurisdiction of the Court, and to compel the Courts of Appeals to proceed to judgment; and the Legislature may confer upon the Supreme Court exclusive original jurisdiction to issue writs of mandamus, except as against the Governor, in classes of cases to be specified by law.

#### POWER TO ASCERTAIN FACTS.

SEC. 11. The Supreme Court shall also have power to ascertain such matters of fact as may be necessary to the exercise of its jurisdiction under such rules as it may prescribe.

#### POWER TO MAKE RULES.

SEC. 12. The Supreme Court shall have power to make rules for its own government and rules for the procedure and government of the other courts of the State.

#### CLERK.

SEC. 13. The Supreme Court shall appoint its clerk, who shall hold the office for four years, subject to removal by the Court, and who shall give such bond as may be prescribed.

### COURTS OF APPEALS.

SECTION 1. There shall be such number of Courts of Appeals as the Legislature shall deem necessary for the public welfare; and the Legislature shall, at its first session after the adoption of this amendment by the vote of the people, lay off the State into as many divisions as there may be Courts of Appeals, so that there shall be in the counties assigned to each division, as near as may be, an equal amount of business to come before each Court of Appeals.

SEC. 2. There shall be elected by the qualified voters of each division, at the first general election after this amendment takes effect, three Judges for each of said divisions, who shall reside in said divisions. The qualifications of the judges of the Courts of Appeals shall be the same as that of the justices of the Supreme Court; they shall hold their offices for the term of six years from the time of their election; they shall receive such annual salary as may be prescribed by the Legislature, but the same shall not be increased or diminished during the time they shall hold their offices by virtue of their election, and a majority of the judges of said



office will expire by the Constitution and laws under which they were elected.

#### THEIR QUALIFICATIONS.

SEC. 4. Each Justice of the Supreme Court shall be a qualified voter; shall have arrived at the age of thirty years, and shall have been a practicing lawyer in this State, or a judge of a District Court therein, or such judge and practicing lawyer, at least seven years at the time of his election or appointment.

#### THE CHIEF JUSTICE.

SEC. 5. The Justices of the Supreme Court shall select from their own number a presiding officer, who shall be called Chief Justice, who shall preside over the court for such time and perform such duties as may be prescribed by the Court.

#### SALARY.

SEC. 6. The Justices of the Supreme Court shall receive such salary as may be provided for by law; but their salaries shall not be increased or diminished during the time they shall hold their offices by virtue of their election.

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and in such manner as the Legislature may from time to time prescribe.

#### POWER TO ISSUE WRITS.

SEC. 10. The Supreme Court shall have power to issue such writs as may be necessary to enforce the jurisdiction of the Court, and to compel the Courts of Appeals to proceed to judgment; and the Legislature may confer upon the Supreme Court exclusive original jurisdiction to issue writs of mandamus, except as against the Governor, in classes of cases to be specified by law.

#### POWER TO ASCERTAIN FACTS.

SEC. 11. The Supreme Court shall also have power to ascertain such matters of fact as may be necessary to the exercise of its jurisdiction under such rules as it may prescribe.

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SEC. 12. The Supreme Court shall have power to make rules for its own government and rules for the procedure and government of the other courts of the State.

#### CLERK.

SEC. 13. The Supreme Court shall appoint its clerk, who shall hold the office for four years, subject to removal by the Court, and who shall give such bond as may be prescribed.

### COURTS OF APPEALS.

SECTION 1. There shall be such number of Courts of Appeals as the Legislature shall deem necessary for the public welfare; and the Legislature shall, at its first session after the adoption of this amendment by the vote of the people, lay off the State into as many divisions as there may be Courts of Appeals, so that there shall be in the counties assigned to each division, as near as may be, an equal amount of business to come before each Court of Appeals.

SEC. 2. There shall be elected by the qualified voters of each division, at the first general election after this amendment takes effect, three Judges for each of said divisions, who shall reside in said divisions. The qualifications of the judges of the Courts of Appeals shall be the same as that of the justices of the Supreme Court; they shall hold their offices for the term of six years from the time of their election; they shall receive such annual salary as may be prescribed by the Legislature, but the same shall not be increased or diminished during the time they shall hold their offices by virtue of their election, and a majority of the judges of said

Courts shall constitute a quorum for the transaction of business pertaining to said Courts. Until an election takes place as above provided, the Governor, with the advice and consent of the Senate, may, if deemed by the Legislature necessary, appoint the judges of said Courts of Appeals, who shall hold their offices until their successors are elected and qualified.

SEC. 3. The judges of each of said Courts of Appeals shall select from their number a presiding officer who shall be called the Presiding Judge, who shall preside over the Court for such time and perform such duties as may be prescribed by the Court.

#### TERMS.

SEC. 4. The Courts of Appeals shall sit in their respective divisions from the first Monday in October till the last Saturday in June of each year, at such times and places as the Legislature may prescribe.

#### APPELLATE JURISDICTION.

SEC. 5. The said Courts of Appeals shall have appellate jurisdiction co-extensive with their respective divisions in *habeas corpus* cases, and of all cases, civil and criminal, in which final judgment may have been rendered in the Districts Courts and County Courts, under such regulations as may be prescribed by law; they shall have appellate jurisdiction from such special courts or jurisdictions as may be created by the Legislature in which the right of appeal may be given by law; and the Legislature may, under such regulations as it may prescribe, allow appeals from interlocutory judgments, and it may limit the right of appeal originating in special courts, justices' courts and other inferior courts.

#### POWER TO ISSUE WRITS.

SEC. 6. The Courts of Appeals and the judges thereof shall have power to issue writs of *habeas corpus* within their respective divisions; and said Courts shall have power to issue all writs necessary to maintain or enforce the jurisdiction of said Courts, which writs may run to the limit of the State. The Courts of Appeals shall also have power to issue all necessary writs within their respective divisions to compel District, County and special courts to proceed to judgment.

SEC. 7. The said Courts of Appeals shall also have power, upon affidavit or otherwise, to ascertain all matters of fact that may be necessary to maintain or enforce their jurisdiction.

SEC. 8. The said Courts of Appeals shall appoint a clerk for each place at which they may sit, which clerk shall hold his office four years, subject to removal by the Court, and shall give such bond as is or may be prescribed.

## DISPOSITION OF CAUSES NOW PENDING.

SEC. 9. All causes pending in the Supreme Court when this amendment takes effect, shall remain in the Supreme Court created by this amendment, and be thus determined. Upon the complete organization of the Courts of Appeals under this amendment, and the appointment and qualification of the judges thereof, all causes pending in the present Court of Appeals shall be transferred to the Court of Appeals of the division from which said appeal was taken, in the manner to be prescribed by law. Until the complete organization of the Courts of Appeals under this amendment, and the qualification of the respective judges of said courts, the present Court of Appeals shall continue under the Constitution of which this is an amendment, and all laws in force shall continue in force with respect to the jurisdiction and powers of said court, and the judges thereof, until the complete organization of the Courts of Appeals under this amendment.

Respectfully submitted,

JOHN A. GREEN,

One of the Committee.

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# PROCEEDINGS

OF THE

❧ SIXTH \* ANNUAL \* SESSION ❧

OF THE

## TEXAS BAR ASSOCIATION

HELD IN THE

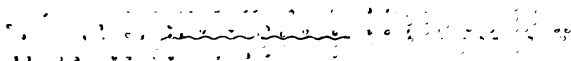
CITY OF WACO, SEPTEMBER 27, 1887.

WITH THE

## CONSTITUTION AND BY-LAWS

ALSO

OFFICERS, STANDING COMMITTEES AND ROL OF MEMBERS  
FOR THE YEAR 1887-88.



AUSTIN:

PRINTED BY ORDER OF THE ASSOCIATION.

1887.

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These Proceedings are published by authority and distributed to members by the Association.

CHARLES S. MORSE, *Secretary*.

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The Seventh Annual Session of the Association will be held in the City of Fort Worth, on the first Wednesday in July, A. D., 1888.

THE ASSOCIATION OF  
THEOLOGICAL LIBRARIANS

# TEXAS ‡ BAR ‡ ASSOCIATION

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## CONSTITUTION.

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### ARTICLE I.—NAME AND OBJECTS OF THE ASSOCIATION.

SECTION 1. This Association shall be called the TEXAS BAR ASSOCIATION.

SEC. 2. Its objects shall be to advance the science of jurisprudence, promote the uniformity of legislation in the administration of justice throughout the State, uphold the honor of the profession of the law, and encourage cordial intercourse among its members.

### ARTICLE II.—MEMBERSHIP.

SECTION 1. Any attorney of the Texas bar, in honorable standing, upon his written application, may be admitted to membership at any regular meeting of the Association. Said application must be endorsed by three members of the Association, and a fee of \$5 shall accompany the same—\$2.50 initiation fee, and \$2.50 annual dues.

SEC. 2. Such application shall be referred to the Board of Directors, who shall report the same to the Association; and if said report be favorable, a ballot shall be taken, and if four-fifths of the members voting shall be in favor of the applicant he shall be declared elected; and if he shall sign the Constitution and pay his admission fee within ten days after he shall be notified of his election, he shall be placed on the roll of members.

### ARTICLE III.—OFFICERS AND THEIR DUTIES.

SECTION 1. The officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, who shall be chosen by ballot at a regular meeting, by a majority of the members present and voting.

SEC. 2. There shall be a Board of Directors, five in number, elected at the same time and in the same manner with the officers; and the President and Vice-President shall be ex-officio members of the Board.

SEC. 3. The officers and Directors shall hold their places for one year, and until their successors shall be elected; provided that the same person shall not be elected President two years in succession.



SEC. 4. The duties of officers shall be such as usually devolve upon such positions, and may be regulated and prescribed from time to time by the Constitution, By-Laws or resolutions of the Association.

SEC. 5. The Board of Directors shall have exclusive authority, and shall exercise executive supervision over the affairs of the Association between its meetings.

SEC. 6. Vacancies in the offices and Board of Directors, shall be filled by the Board, the concurrence of a majority of whom shall be necessary to a choice.

#### ARTICLE IV.—COMMITTEES.

SECTION 1. The following committees shall be appointed annually by the President for the year ensuing, and shall consist of five members each : On Jurisprudence and Law Reform; on Judicial Administration and Remedial Procedure; on Legal Education and Admission to the Bar; on Commercial Law, on Publication; on Grievances and Discipline.

SEC. 2. A Committee of three, of whom the Secretary shall always be one, shall be appointed by the President at each annual meeting of the Association, whose duty it shall be to report to the next meeting the names of all members who shall in the interval have died, with such notices of them as shall, in the discretion of the committee be proper.

#### ARTICLE V.—GENERAL POWERS.

SECTION 1. This Association shall have power to impose fines, assess fees and establish by-laws for its government. It shall have power to remove officers, and suspend or expel members for good cause, upon written charges exhibited against them by a member, and due notice given of the charges, and of the time they will be brought before the Association.

SEC. 2. The By-Laws shall prescribe the assessments to be levied on the members for the support of the Association and the promotion of its objects.

#### ARTICLE VI.—QUORUM.

SECTION 1. Twenty-five members in regular standing shall constitute a quorum for the transaction of business.

#### ARTICLE VII.—ANNUAL ADDRESS.

SECTION 1. The President shall open each meeting of the Association with an address, in which he shall communicate the noteworthy changes in statutory and constitutional law, and especially such changes as effect the development and progress of the law and the administration of justice.

#### ARTICLE VIII.—MEETINGS

SECTION 1. A majority of the members present at an annual meeting of this Association shall designate the time and place for holding the next annual meeting.

#### ARTICLE IX.—AMENDMENTS.

SECTION 1. All propositions to alter, amend or add to this Constitution shall

be made in writing at a meeting of the Association, and filed with the Secretary at least one month before being acted upon, and shall not be adopted without the concurrence of two-thirds of all the members present.

#### ARTICLE X.—DUES.

SECTION 1. Each member of the Association shall pay to the Secretary the sum of \$2.50 as annual dues.

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## BY-LAWS.

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#### ARTICLE I.—PRESIDING OFFICERS.

SECTION 1.—The President, and in his absence the Vice-President shall preside at all meetings of the Association ; if neither of these officers be present, a President pro tem. shall be chosen by and from the attending members.

#### ARTICLE II.—ADDRESSES AND ESSAYS.

SECTION 1. The Board of Directors at its first meeting after each annual meeting, shall select some person to make an address at the next annual meeting, and not exceeding six persons to read papers.

#### ARTICLE III.—ANNUAL MEETINGS AND ORDER OF BUSINESS.

SECTION 1. The order of exercises at the annual meetings shall be as follows :

1. Opening address of the President.
  2. The nomination and election of members.
  3. Report of the Board of Directors.
  4. Election of the Board of Directors.
  5. Reports of the Secretary and Treasurer.
  6. Reports of Standing Committees, as follows : On Jurisprudence and Law Reform ; on Judicial Administration and Remedial Procedure ; on Legal Education and Admission to the Bar ; on Commercial Law ; on Publication ; on Grievances and Discipline.
  7. Reports of special committees.
  8. The nomination of officers.
  9. Miscellaneous business.
  10. The election of officers.
  11. The annual address, to be delivered by the person selected by the Board of Directors, shall be made at the morning session of the second day of the annual meeting.
- SEC. 2. This order of business may be changed at any meeting by a vote of a majority of the members present ; and, except as otherwise provided by the Constitution or By-Laws, the usual parliamentary rules and orders will govern the proceedings.

SEC. 3. No person shall speak more than ten minutes at a time, nor more than twice on the same subject.

SEC. 4. A stenographer shall be employed at each annual meeting.

SEC. 5. Each county bar association may annually appoint delegates, not exceeding three in number, to the next meeting of the Association, and such delegates shall be entitled to all the privileges of membership at and during said meeting.

SEC. 6. All papers read before the Association shall be lodged with the Secretary. The annual address of the President, the reports of the committees and proceedings of the annual meetings shall be printed, but no other address made or paper read or presented shall be printed except by order of the Committee on Publication.

#### ARTICLE IV.—MEMBERSHIP AND DUES.

SECTION 1. The initiation fee to entitle a person to membership shall be five dollars which shall include the annual dues for the first year.

SEC. 2. The annual dues shall be payable at the annual meeting in advance, and should any member neglect to pay them for any year, at or before the next annual meeting, he shall cease to be a member. The Secretary shall give notice of this By-Law, within sixty days after each meeting, to all members in default.

#### ARTICLE V.—OFFICERS AND COMMITTEES.

SECTION 1. The terms of office of all officers elected at the annual meeting shall commence at the adjournment thereof, except the Board of Directors, whose term of office shall commence immediately upon their election.

SEC. 2. The President shall appoint all committees, except the Committee on Publication, within thirty days after the annual meeting, and shall announce them to the Secretary, who shall promptly give notice to the person appointed. The Committee on Publication shall be appointed on the first day of each meeting.

SEC. 3. The Secretary's and Treasurer's reports shall be examined and audited by the Board of Directors before their presentation to the Association.

SEC. 4. The Board of Directors and all standing committees shall meet on the day preceeding each annual meeting, at the place where the same is to be held, at such hour as their respective chairmen shall appoint, and should any member of any committee be absent, the vacancy may be filled by the members of the committee present.

SEC. 5. The Committee on Publication shall meet within one month after each annual meeting, at such time and place as the chairman shall appoint.

SEC. 6. Special meetings of any committee shall be held at such times and places as the chairman thereof may appoint; reasonable notice shall be given by him to each member by mail.

#### ARTICLE VI.—DUTIES OF COMMITTEES.

SEC. 1. It shall be the duty of the Committee on Jurisprudence and Law Reform to consider and report to the Association such amendments to the law as in

its opinion should be adopted ; also to scrutinize proposed changes in the law, and, when necessary, report upon the same.

SEC. 2. It shall be the duty of the Committee on Judicial Administration and Remedial Procedure to observe the practical working of the judicial system of the State, and recommend by written or printed report, from time to time, any changes therein, which observation or experience may suggest.

SEC. 3. It shall be the duty of the Committee on Legal Education and Admission to the Bar to report the most suitable means for promoting and facilitating the study of the law, and the necessity or propriety of elevating the standard of qualifications for admission to the bar, and the best means for accomplishing that object.

SEC. 4. It shall be the duty of the Committee on Commercial Law to report the best means to produce uniformity in commercial law and usages.

SEC. 5. The Committee on Publication shall pass upon and have printed all papers should they deem them of sufficient importance, except as it is otherwise provided by the Constitution and By-Laws.

SEC. 6. The Committee on Grievances and Discipline shall report as to the best means of upholding the honor and dignity of the law in the professional intercourse among the members of this Association. All complaints against the members of this Association shall be presented to this committee, and if the committee shall be of the opinion that the matters alleged are of sufficient importance, they will determine upon the course of procedure for the trial of the same ; and shall give notice to the party charged of the nature of the complaint and the time of the trial thereof by the Association, all of which the complainant shall also be notified of by the committee.

#### ARTICLE VII.—RESOLUTIONS.

SEC. 1. No resolution complimentary to any officer or member, for any service performed, paper read, or address delivered, shall be considered by this Association.

#### ARTICLE VIII.—AMENDMENTS.

SEC. 1. These By-Laws may be amended at any meeting of the Association, by a vote of two-thirds of those present, provided that a copy of the proposed amendment shall have been filed with the Secretary on or before the first day of such annual meeting.

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PROCEEDINGS  
OF THE  
SIXTH \* ANNUAL \* SESSION  
OF THE  
TEXAS \* BAR \* ASSOCIATION

HELD IN THE  
CITY OF WACO, SEPTEMBER 27, 1887.

---

*FIRST DAY.*—MORNING SESSION.

WACO, TEXAS, September 27, 1887.

The Association was called to order by the President, Hon. THOS. J. BEALL.

The following officers were present :

Hon. THOS. J. BEALL, President.

L. C. ALEXANDER, Chairman Board of Directors.

W. M. FLOURNOY, Chairman Committee on Jurisprudence and Law Reform.

M. D. HERRING, Chairman Committee on Legal Education and admission to the Bar.

GEO. CLARK, Chairman Committee on Grievances and Discipline.

THOS. W. DODD, Chairman on Publication.

A quorum being present on motion the roll call was suspended, and the President announced that the Texas Bar Association was duly opened in its sixth annual session.

Hon. EUGENE WILLIAMS welcomed the members of the Association in the name of the citizens and the Bar of Waco and McLennan county, which was responded to by the President in behalf of the Association.

The President then delivered his annual address. [See Appendix.]

On motion the regular order of business was suspended and the Association then proceeded to the election of a Board of Directors, which resulted in the selection of the following :

C. C. GARRETT, of Brenham. NORMAN G. KITTRELL, of Jewett. W. A. KINCAID, of Groesbeck. T. A. BLAIR, of Waco. THOS. W. DODD, of Laredo.

The Board of Directors then made the following report :

*To the President and Members of the Texas Bar Association :*

GENTLEMEN—The Board of Directors having had under consideration the names of D. A. Kelly, Wm. Capps and M. C. H. Parks do unanimously report favorably upon all of said names, and we recommend the election of each and all of said applicants.

C. C. GARRETT,  
W. A. KINCAID,  
THOS. W. DODD,  
T. A. BLAIR,  
NORMAN G. KITTRELL.

On motion the report was adopted and the applicants were duly elected as members of the Association by a unanimous ballot.

The Board of Directors made the following report :

*To the Officers and Members of the Texas Bar Association :*

GENTLEMEN—The Board of Directors have examined and approved the accounts of the Secretary and Treasurer of this Association as contained in their annual reports. Respectfully submitted.

C. C. GARRETT,  
W. A. KINCAID,  
THOS. W. DODD,  
T. A. BLAIR,  
NORMAN G. KITTRELL

The Secretary then read his annual report, which is as follows:

### Secretary's Report.

WACO, TEXAS, September 27, 1887.

*To the President and Members of the Texas Bar Association :*

GENTLEMEN—I have the honor to submit herewith my annual report as Secretary of the Texas Bar Association for the year ending July 1, 1887, together with the action of the Board of Directors thereon.

#### RECEIPTS.

|                                                         |          |
|---------------------------------------------------------|----------|
| Initiation fees from 51 new members at \$2.50 each..... | \$127 50 |
| Annual dues received from members up to July 1,.....    | 357 50   |
| Amount drawn from treasury on warrants.....             | 305 00   |
| Balance in my hands per last report.....                | 24       |
| Total.....                                              | \$790 24 |

#### DISBURSEMENTS.

|                                                               |          |
|---------------------------------------------------------------|----------|
| Printing proceedings of 1886 per warrant.....                 | \$200 00 |
| Stenographic report—by order of Association per warrant.....  | 100 00   |
| Paid Von Boeckmann for envelopes, receipts and circulars..... | 16 00    |
| Paid for postage, wrappers and postal cards.....              | 38 00    |
| Paid for wrappers per bill.....                               | 5 00     |
| Paid for binding receipts.....                                | 1 00     |
| Paid for copy of Bar resolutions to Legislature.....          | 5 00     |
| Secretary's salary from July 1, 1886, to July 1, 1887.....    | 120 00   |
| By amount placed in treasury per receipt.....                 | 305 24   |
| Total.....                                                    | \$790 24 |

All of which is respectfully submitted.

CHAS. S. MORSE, Secretary.

The Treasurer's report was then read as follows :

### **Treasurer's Report.**

WACO, TEXAS, September 27, 1887.

*To the President and Members of the Texas Bar Association :*

GENTLEMEN—I have the honor to submit herewith my annual report as Treasurer of the Texas Bar Association, for the year ending July 1, 1887.

#### **DR.**

|                                     |          |
|-------------------------------------|----------|
| Amount on hand per last report..... | \$361 35 |
| Amount received from Secretary..... | 305 24   |
| Total.....                          | \$666 59 |

#### **CR.**

|                                                    |          |
|----------------------------------------------------|----------|
| Amount paid warrant favor of T. H. Wheless.....    | \$100 00 |
| Amount paid warrant favor of E. Von Boeckmann..... | 200 00   |
| Amount paid H. M. Little.....                      | 5 00     |
|                                                    | \$305 00 |
| To balance on hand.....                            | 361 59   |
|                                                    | \$666 59 |

All of which is respectfully submitted.

ROBT. G. WEST, Treasurer.

The Committee on Jurisprudence and Law Reform asked for and were granted further time to make report.

The Committee on Legal Education and admission to the Bar asked for and were granted further time.

The election of officers then resulted in the selection of the following :

W. L. CRAWFORD, of Dallas, President ; M. D. HERRING, of Waco, Vice-President ; CHAS. S. MORSE, of Austin, Secretary ; ROBT. G. WEST, of Austin, Treasurer.

On motion the Association adjourned until 8:30 o'clock, P. M.



*FIRST DAY.—EVENING SESSION.*

The Association was called to order at 8:30 o'clock, P. M., by Hon. THOS. J. BEALL, President. Quorum present.

The Board of Directors having requested Hon. C. C. GARRETT, of Brenham, to prepare a paper to be read before the Association, that gentleman being present read an elaborate address on Law Reform, touching particularly the jurisdiction of non-residents. [See Appendix.]

After the conclusion of Mr. GARRETT's address, the time and place for the next annual meeting was then considered, which resulted in the selection of the city of Fort Worth as the place, and the first Wednesday in July, 1888, as the time for holding the seventh annual meeting.

After adopting complimentary resolutions to the members of the Waco Bar and the county officers for courtesies extended and favors shown, the members of the Association adjourned to meet in the City of Fort Worth on the first Wednesday in July, A. D., 1888.

CHAS. S. MORSE, Secretary.

---

## OFFICERS AND COMMITTEES.

---

|                     |                             |         |
|---------------------|-----------------------------|---------|
| W. L. CRAWFORD..... | <i>President</i> .....      | Dallas. |
| M. D. HERRING.....  | <i>Vice-President</i> ..... | Waco.   |
| CHAS. S. MORSE..... | <i>Secretary</i> .....      | Austin. |
| ROBT. G. WEST.....  | <i>Treasurer</i> .....      | Austin. |

### DIRECTORS.

|                         |           |
|-------------------------|-----------|
| C. C. Garrett.....      | Brenham.  |
| Norman G. Kittrell..... | Jewett.   |
| W. A. Kincaid.....      | Groesbeck |
| T. A. Blair.....        | Waco.     |
| Thos. W. Dodd.....      | Laredo.   |

### *Committee on Jurisprudence and Law Reform.*

|                      |              |
|----------------------|--------------|
| H. O. Head.....      | Sherman.     |
| C. A. Culberson..... | Jefferson.   |
| H. W. Rhodes.....    | Galveston.   |
| William Aubry.....   | San Antonio. |
| C. K. Bell.....      | Hamilton.    |

### *Committee on Judicial Administration and Remedial Procedure.*

|                      |               |
|----------------------|---------------|
| A. M. Carter.....    | Fort Worth.   |
| N. W. Finley.....    | Tyler.        |
| James F. Miller..... | Gonzales.     |
| W. P. McLean.....    | Mt. Pleasant. |
| L. J. Story.....     | Lockhart.     |

### *Committee on Legal Education and Admission to the Bar.*

|                      |              |
|----------------------|--------------|
| W. P. Ballinger..... | Galveston.   |
| R. S. Gould, Sr..... | Austin.      |
| B. G. Bidwell.....   | Weatherford. |
| W. W. Spivey.....    | Henderson.   |
| Henry Sayles.....    | Abilene.     |

*Committee on Commercial Law.*

|                       |            |
|-----------------------|------------|
| Leo N. Levi.....      | Galveston. |
| C. S. Todd.....       | Texarkana. |
| S. C. Paddelford..... | Cleburne.  |
| Sam R. Fisher.....    | Austin.    |
| William Charlton..... | Terrell.   |

*Committee on Grievances and Discipline.*

|                       |             |
|-----------------------|-------------|
| R. M. Wynne.....      | Fort Worth. |
| B. D. Tarlton .....   | Hillsboro.  |
| X. B. Sanders.....    | Belton.     |
| Anson Rainey.....     | Waxahachie. |
| George McCormick..... | Columbus.   |

*Committee on Deceased Members.*

|                                        |          |
|----------------------------------------|----------|
| T. S. Maxey.....                       | Austin.  |
| Thomas J. Beall.....                   | El Paso. |
| Chas. S. Morse, <i>Secretary</i> ..... | Austin.  |

*Committee on Publication.*

|                      |            |
|----------------------|------------|
| W. D. Williams.....  | Austin.    |
| R. S. Neblett .....  | Corsicana. |
| William Capps.....   | Fort Worth |
| Eugene Williams..... | Waco.      |
| E. A. Atlee .....    | Laredo.    |

*Delegates to National Bar Association.*

|                       |              |
|-----------------------|--------------|
| Thomas J. Devine..... | San Antonio. |
| George Clark.....     | Waco.        |
| H. W. Lightfoot.....  | Paris.       |
| John E. McComb.....   | Montgomery   |

[NOTE.—The President of the Association desires that the Chairman of each committee put himself in communication at once with each member of his committee, and that each committee begin without delay to prepare the material for a report. The selection of the committee has been made with the expectation and belief that each member of each committee will not only discharge the full measure of his duty in making a report, but that he will be personally present at the next annual meeting]

## ROLL OF MEMBERS.

---

Abbott, Jo.....Hillsboro  
 Acker, Walter.....Lampasas  
 Alexander, L. C.....Waco  
 Allen, W. H.....Terrell  
 Anderson, James M.....Waco  
 Andrews, A. W.....Terrell  
 Andrews, R. W.....Big Springs  
 Archer, Osceola.....Austin  
 Atkinson, W. M.....Gonzales  
 Atlee, E. A.....Laredo  
 Austin, Wm. J.....Denton  
 Aubry, Wm.....San Antonio

Ballinger, W. P.....Galveston  
 Baker, James A., sr.....Houston  
 Baker, James A., jr.....Houston  
 Bailey, W. J.....Fort Worth  
 Ball, R. L.....Colorado  
 Bassett, B. H.....Brenham  
 Battle, N. W.....Waco  
 Beall, T. J.....<sup>4</sup> Fort Worth  
 Bergstrom, O.....San Antonio  
 Bidwell, B. G.....Weatherford  
 Blair, T. A.....Waco  
 Blake, S. R.....Bellville  
 Blanding, J. M.....Corsicana  
 Bledsoe, D. T.....Cleburne  
 Botts, W. B.....Houston  
 Bower, E. G.....Dallas  
 Bradley, L. D.....Fairfield  
 Bradshaw, C. J.....LaGrange  
 Brown, T. J.....Sherman  
 Brown, R. L.....Sherman  
 Burgess, W. H.....Seguin  
 Burts, James H.....Austin

Callaghan, Bryan.....San Antonio  
 Campbell, A. R.....Galveston  
 Carleton, Fred.....Austin  
 Carrington, W. A.....Houston  
 Carroll, J. A.....Denton  
 Carr, J. S.....San Antonio  
 Carter, A. M.....Fort Worth  
 Cate, M. H.....Mireola  
 Charlton, Wm.....Kaufman  
 Chesley, A.....Bellville

Clark, George.....Waco  
 Clark, W. H.....Dallas  
 Cleveland, C. L.....Galveston  
 Coke, Henry C.....Dallas  
 Conner, T. H.....Eastland  
 Cooper, J. F.....Fort Worth  
 Copeland, John H.....San Antonio  
 Coughanour, R. D.....Dallas  
 Crain, W. H.....Hallettsville  
 Crawford, M. L.....Dallas  
 Croft, William.....Corsicana  
 Croom, J. L., Jr.....Belton  
 Culberson, Chas. A.....Jefferson  
 Cunningham, J. D.....Kaufman

Davidson, W. L.....Richmond  
 Davis, L. B.....Cleburne  
 DeArmond, R.....McKinney  
 DeBerry, A. W.....Fort Worth  
 Delany, W. S.....Columbus  
 Dennis, Isaac N.....Wharton  
 Denson, W. B.....Galveston  
 Dickson, Jos. M.....Dallas  
 Dodd, Thos. W.....Laredo  
 Dowell, John.....Austin  
 Drought, H. P.....San Antonio

Evans, Chas. I.....Abilene

Farrar, L. J.....Groesbeck  
 Finley, N. W.....Tyler  
 Fisher, Sam R.....Austin  
 Flournoy, M. W.....Waco  
 Foard, R. L.....Columbus  
 Fontaine, Sidney T.....Galveston  
 Ford, T. W.....Jasper  
 Franklin, Thos. H.....San Antonio  
 Fulmore, Z. T.....Austin  
 Fulton, Marshall.....Denton

Gaines, W. P.....Austin  
 Gano, W. B.....Dallas  
 Gardner, B. H.....Fairfield  
 Garrett, C. C.....Brenham

|                     |                |                      |                |
|---------------------|----------------|----------------------|----------------|
| Garrett, N. P.      | Cameron        | Kincaid, W. A.       | Grosebeck      |
| Geer, M. R.         | Marshall       | Kirk, Lafayette      | Brenham        |
| Gibbs, B.           | Dallas         | Kirven, O. C.        | Fairfield      |
| Gibson, James P.    | Rusk           | K'ttrel, N. G.       | Centreville    |
| Giles, W. M.        | Mineola        | Kleberg, Rudolph     | Cuero          |
| Gilvons, John S.    | Corpus Christi |                      |                |
| Goldthwaite, Geo.   | Houston        |                      |                |
| Gooch, John Y.      | Palestine      | Lane, John           | LaGrange       |
| Gordon, John A.     | Decatur        | Ledbetter, W. H.     | LaGrange       |
| Gould, R. S., sr.   | Austin         | Lessing, W. H.       | Ben Ficklin    |
| Gould, R. S., jr.   | Bryan          | Levi, Leo N.         | Galveston      |
| Grace, Charles D.   | Bonham         | I'ghtfoot, H. W.     | Paris          |
| Graham, A. H.       | Austin         | Looney, F. B.        | Butler         |
| Greene, S. P.       | Fort Worth     | Loosecan, M.         | Houston        |
| Green, John A.      | San Antonio    | Lumpkin, S. H.       | Meridian       |
| Green, N. O.        | San Antonio    |                      |                |
| Gresham, Walter     | Galveston      | Mantooth, Edwin J.   | Homer          |
| Grigsby, W. H.      | Mobeetie       | Marr, D. P.          | Pearsall       |
| Grimes, S. F.       | Cuero          | Martin, Thomas P.    | Fort Worth     |
|                     |                | Masterson, B. T.     | Galveston      |
| Haggerty, J. J.     | Bellville      | Masterson, James.    | Houston        |
| Haney, Jasper N.    | Weatherford    | Mason, George        | Galveston      |
| Hancock, John       | Austin         | Mason, J. R.         | San Antonio    |
| Harcourt, John T.   | Weatherford    | Matlock, A. L.       | Montague       |
| Hare, Silas         | Sherman        | Mayfield, C. H.      | San Antonio    |
| Harris, A. J.       | Belton         | Maxey, T. S.         | Austin         |
| Harwood, T. M.      | Gonzales       | McCampbell, John S.  | Corpus Christi |
| Harwood, T. F.      | Gonzales       | McComb, John E.      | Montgomery     |
| Hefly, W. T.        | Cameron        | McCormick, George    | Columbus       |
| Henderson, T. S.    | Cameron        | McCoy, John C.       | Dallas         |
| Henry, John L.      | Dallas         | McDonald, W. L.      | Dallas         |
| Herring, M. D.      | Waco           | McFarland, J. B.     | Brenham        |
| Hill, George L.     | Gainesville    | McKinnon, A. P.      | Hillsboro      |
| Hogsett, J. Y.      | Fort Worth     | McKinnon, Neil L.    | Schulenburg    |
| Holmes, H. M.       | Mason          | McLean, W. P.        | Mount Pleasant |
| Houston, A. W.      | San Antonio    | McLeary, J. H.       | San Antonio    |
| Houston, Reagan     | San Antonio    | McLemore, M. C.      | Galveston      |
| Howard, Russell     | Floresville    | McNeal, Thomas       | Luling         |
| Hume, F. Charles    | Galveston      | Mills, A. M.         | Galveston      |
| Hurt, J. M.         | Dallas         | Miller, James F.     | Gonzales       |
| Hutchings, R. M.    | Galveston      | Miller, T. S.        | Dallas         |
|                     |                | Minyard, W. M.       | Dallas         |
| Jackson, A. M., jr. | Austin         | Mitchell, J. M.      | Houston        |
| Jennings, Hyde      | Fort Worth     | Moore, John W.       | Albany         |
| Jerdone, W. M.      | Galveston      | Moore, W. F.         | Austin         |
| John, A. S.         | Beaumont       | Morgan, Richard, jr. | Dallas         |
| Johnson, T. L.      | Seguin         | Morris, F. G.        | Austin         |
| Johnston, W. M.     | Centreville    | Mott, M. F.          | Galveston      |
| Jones, S. W.        | Galveston      | Murphy, J. B.        | Corpus Christi |
| Jones, C. Anso.     | Houston        |                      |                |
|                     |                | Neblett, R. S.       | Corsicana      |
| Kennard, John R.    | Anderson       | Newton, S. G.        | San Antonio    |
| Kilgore, C. B.      | Wills Point    |                      |                |
| Kilgore, S. B.      | Wills Point    | O'Brien, Geo. W.     | Beaumont       |

|                         |             |                         |             |
|-------------------------|-------------|-------------------------|-------------|
| O'Neill, J. M.....      | Fort Worth  | Spence, W.....          | Dallas      |
| Ochse, J. E.....        | San Antonio | Stayton, John W.....    | Victoria    |
| Padelford, S. C.....    | Cleburne    | Stayton, Robert W.....  | Victoria    |
| Paschal, George.....    | San Antonio | Stephens, John H.....   | Montague    |
| Pearson, P. E.....      | Richmond    | Stewart, Joe H.....     | Austin      |
| Peeler, A. J.....       | Austin      | Storey, L. J.....       | Lockhart    |
| Perkins, E. B.....      | Greenville  | Stout, J. F.....        | Corsicana   |
| Phelps, R. H.....       | LaGrange    | Street, Robert G.....   | Galveston   |
| Plowman, Geo. H.....    | Dallas      | Stubbs, James B.....    | Galveston   |
| Ponton, T. J.....       | Gonzales    | Styles, Cary W.....     | Glen Rose   |
| Pope, A.....            | Marshall    | Swain, W J.....         | Austin      |
| Pope, W. H.....         | Marshall    | Swan, A. K.....         | Henrietta   |
| Porter, R. C.....       | Dallas      | Swearingen, J. T.....   | Brenham     |
| Potter, C. L.....       | Gainesville |                         |             |
| Prather, William L..... | Waco        | Taliaferro, S.....      | Houston     |
| Prendergast, F. H.....  | Marshall    | Tarleton, B. D.....     | Hillsboro   |
| Proctor, D. C.....      | Cuero       | Templeton, John D.....  | Austin      |
| Quinan, George.....     | Wharton     | Terhune, E. W.....      | Greenville  |
|                         |             | Terrell, A. W.....      | Austin      |
| Rainey, Anson.....      | Waxahachie  | Terrell, J. O.....      | Terrell     |
| Randle, E. B.....       | Brenham     | Terry, J. W.....        | Galveston   |
| Read, F. N.....         | Corsicana   | Thomson, T. A.....      | Austin      |
| Reaves, S. D.....       | Tyler       | Thompson, Wells.....    | Columbus    |
| Rector, John B.....     | Austin      | Todd, George T.....     | Jefferson   |
| Rector, N. A.....       | Giddings    | Tucker, Chas. Fred..... | Dallas      |
| Roach, I. N.....        | Weatherford | Tucker, Philip C.....   | Galveston   |
| Roberts, O. M.....      | Austin      | Upton, C.....           | San Antonio |
| Robertson, John W.....  | Austin      | Vernor, Henry E.....    | San Antonio |
| Robertson, H. G.....    | Tyler       |                         |             |
| Robertson, Sawnie.....  | Dallas      | Walker, A. S.....       | Austin      |
| Robinson, C. S.....     | San Antonio | Walker, John C.....     | Galveston   |
| Robson, W. S.....       | LaGrange    | Walker, Richard S.....  | Nacogdoches |
| Rogers, R. E.....       | Fort Worth  | Walker, R. C.....       | Austin      |
| Russell, D. L.....      | Belton      | Wallace, W. R.....      | Castroville |
| Russell, L. B.....      | Refugio     | Walling, W. W.....      | San Antonio |
| Russell, T. J.....      | Beaumont    | Walthall, L. N.....     | San Antonio |
|                         |             | Walton, W. M.....       | Austin      |
| Sayers, J. D.....       | Bastrop     | Ward, P. H.....         | San Antonio |
| Sayles, Henry.....      | Abilene     | Watts, A. T.....        | Dallas      |
| Scott, B. R. A.....     | Galveston   | Waul, T. N.....         | Galveston   |
| Scott, J. Z. H.....     | Galveston   | Webb, W. G.....         | Houston     |
| Scott, J. C.....        | Fort Worth  | West, R. G.....         | Austin      |
| Searcy, W. W.....       | Brenham     | White, Alex.....        | Dallas      |
| Sebastian, W. P.....    | Cisco       | White, John P.....      | Austin      |
| Sexton, Frank B.....    | Colorado    | Whitehead, J. P. C..... | Austin      |
| Shaw, W. N.....         | Houston     | Whitman, M. J.....      | Rusk        |
| Shelley, N. G.....      | Austin      | Willett, G. B.....      | Austin      |
| Shepard, Seth.....      | Dallas      | Williams, Eugene.....   | Waco        |
| Shropshire, E. L.....   | Comanche    | Williams, W. D.....     | Austin      |
| Simkins, W. S.....      | Dallas      | Wille, A. H.....        | Galveston   |
| Simpson, Isaac P.....   | San Antonio | Wilson, W. L.....       | Galveston   |
| Simpson, French.....    | Columbus    | Willson, Sam A.....     | Austin      |
| Simpson, J. B.....      | Dallas      | Willson, Sam P.....     | Rusk        |
| Sinks, Ed. R.....       | Giddings    | Winter, John G.....     | Waco        |
|                         |             | Wood, W. D.....         | San Marcos  |
|                         |             | Woods, John S.....      | Kaufman     |
|                         |             | Woodward, W. H.....     | Indianola   |
|                         |             | Wooten, Dudley G.....   | Austin      |
|                         |             | Wright, W. B.....       | Dallas      |
|                         |             | Wynne, R. M.....        | Fort worth  |

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#### DECEASED MEMBERS.

ADAMS, Z. T., Kaufman. Died January 9, 1886.  
ANDREWS, A. W., Terrell. Died February—, 1887.  
BONNER, M. H. Tyler. Died November 25, 1883.  
BRADLEY, L. D., Fairfield. Died October 6, 1886.  
FRISBIE, W. H., Groesbeck. Died September 12, 1882.  
GOSLING, H. L., Castroville. Died February 21, 1885.  
LANGUILLE, P. T., Galveston. Died October 14, 1882.  
LOGUE, L. J., Columbus. Died May 15, 1884.  
MCCOY, JOHN C., Dallas. Died April 30, 1887.  
MOORE, GEORGE F., Austin. Died August 30, 1883.  
PECK, L. L., Fairfield. Died May 30, 1885.  
PEELER, A. J., Austin. Died November 3, 1886.  
PRENDERGAST, H. D., Austin. Died November 5, 1886.  
READ, N. C., Corsicana. Died October 25, 1884.  
RUCKER, W. T., Belton. Died August 10, 1885.  
TIMMONS, B. LaGrange. Died June 17, 1884.  
WAELDER, JACOB, San Antonio. Died August 28, 1887.  
WEST, C. S., Austin. Died October 23, 1885.  
WILKES, F. D., Lampasas. Died November 21, 1886.

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# ADDRESS DELIVERED

BEFORE THE

## TEXAS BAR ASSOCIATION

BY

T. J. BEALL,  
PRESIDENT.

---

*Gentlemen of the Texas Bar Association :*

The Constitution makes it incumbent on the President to open each meeting of the Association with an address, in which he shall communicate the noteworthy changes in statutory and constitutional law; and, especially, such changes as effect the development and progress of the law, and the administration of justice.

The compass of my address is thus marked out ; and, should I feel inclined to select some subject of special interest and tax my humble powers for your entertainment, the occasion must repress the desire while I perform the more practical, if less congenial duty resting upon me, of presenting for your consideration the noteworthy changes made in our statutory laws by the Acts of the last Legislature.

This involves the consideration of a subject that may be fruitful of beneficial results to the State, and yet, most assuredly, dull and unentertaining in its details. A subject not at all calculated to invite the mind to refresh itself in the Pierean spring, where the muses disport themselves in every variety of beauty and grace, nor to pursue those finer fields of thought, where learning unlocks her stores in rich profusion, lends to literature its loveliest charms, and gives to eloquence its most thrilling inspiration.

The Twentieth Legislature met on January the eleventh, A. D. 1887, and adjourned April the fourth, A. D., 1887 ; thus continuing in session nearly three months, during which time was made



many noteworthy changes in the law, and seven joint resolutions passed amending the Constitution of the State, which were submitted to the vote of the people for adoption or rejection, on the first Thursday in August last ; and, by a large and significant vote defeated at the polls.

Among the more important changes in the laws, regulating civil proceedings, we notice the following : A law providing that any suit for damages, growing out of a wrongful levy of writs of attachment or sequestration, may be brought in any county from which such writs issued, or in any county in which such levy is made within this State. A law authorizing writs of sequestration in suits of trespass to try title to any real property, or to foreclose the lien upon any such real property, or for a partition of real property, upon oath being made that the defendant is a non-resident of the State. An Act, amending Chapter Four, Title 29 of the Revised Civil Statutes, by adding thereto an article defining the venue of suits upon breach of warranty of title to lands, which provides, that where the vendors, liable thereon, live in different counties, the plaintiff may bring suit in any county where either of such vendors reside, and join all other vendors in the same suit. An Act, amending Articles 4823 and 4843 of the Revised Civil Statutes, in relation to the trial of right of property, which provides, that when more than one writ has been levied upon the property the bond of the claimant shall enure to the benefit of all the plaintiffs in the several writs according to their respective priorities. Upon the approval of the bond and delivery of the property the same is deemed in custodium legis, and cannot be taken out of the claimants possession by any other like writ ; and any subsequent writs are levied by giving notice, and, in that event, the bond of the claimant enures to the benefit of the plaintiff making the levy. This act also provides the character of judgment to be rendered upon the bond, and the mode of adjusting the equities of the plaintiffs in case the property is insufficient. A law was passed providing for the appointment of receivers, defining their powers and duties, and regulating proceedings under such appointment. We regard this to be an important law as it specifies the particular cases in which receivers may be appointed ; in some of which, under the rules of Chancery practice, the right has been not unfrequently denied to the serious detriment of meritorious suitors, and its effect will, in a great measure, close the door of litigation in respect to the appointment of receivers in the future. A law was passed, amending the Revised Civil Statutes, fixing the venue of suits against foreign corporations doing business in this State, and providing the mode of procuring service or process in such cases. It provides that such corporations or associations may be sued in any county where such company may have an agency

or representative, or in the county in which the principal office is situated, or where it has no agent or representative in the State, then in the county where the plaintiff resides. In cases appealed to the Supreme Court, in order to attain the ends of justice by a review of the questions of law and fact, an Act was passed providing that when a statement of facts shall have been filed after the time prescribed by law, it shall remain a part of the record and be considered in the adjudication of the case, provided, it is made to appear by the party filing the same to the satisfaction of the Supreme Court, or Court of Appeals, that he has used due diligence to obtain the approval of the judge thereto, and to file the same within the time prescribed, and that the failure is not due to the fault or laches of said party or his attorney.

The Legislature, with its usual beneficence and liberality, passed laws enabling delinquent tax payers to redeem land sold for taxes and bought in by the State, upon payment within twelve months, of all taxes due thereon, with interest at the rate of eight per cent. per annum from date of sale. And also made liberal appropriations for the relief of sufferers in the drouth district.

The Legislature also enacted important laws prescribing the duties and liabilities of Railway Companies doing business in this State, requiring them to draw cars, freights and passengers of other roads without delay, defining connecting lines and prohibiting discrimination, and affixing adequate penalties for failure to observe the requirements of the Statute. Also an Act requiring Railways to extend to Express Companies, doing business in this State, equal and reasonable facilities for transportation of freights on their respective roads without discrimination. Also an Act requiring Railroads to pay their own employees promptly, and adding twenty per cent. on the amount due if not paid within fifteen days after demand made upon the nearest station agent. Also giving mechanics, laborers or operatives upon railroads, a lien prior to all others, for amounts due for personal services or for the use of teams.

While the Legislature has been thus careful to guard the interests of the people against the encroachments of railroads, by enacting laws prescribing their duties, and thus preventing unjust discrimination in the transportation of freights and the carriage of passengers, it has at the same time jealously protected their cars, railway tracks, and other property by penal statutes, and, it is believed, that the faithful and rigid enforcement of these laws by those intrusted with their execution, will do much to break down the dissensions, antagonisms and strifes, which have heretofore so disturbed the peace of society.

The Legislature have made noteworthy changes affecting the School and Asylum Lands, and have enacted laws for the sale of

all lands set apart for the benefit of these institutions, and invested the Commissioner of the Land Office with full power to carry the provisions of such laws into effect. This Act prohibits the sale of all such lands to corporations, and reserves them to actual settlers at the minimum price of not less than three dollars for watered sections, and others at the rate of two dollars per acre, requiring the payment of one-fourtieth part of the purchase price, annually, with five per cent. interest thereon.

The Legislature also passed laws authorizing cities and towns to compromise existing indebtedness, and to issue new bonds, to be sold or exchanged, for this purpose, and providing for the efficient collection of taxes to pay the principal and interest upon said bonds. Also an Act authorizing cities and towns to collect taxes for the construction and purchase of public buildings, water works, and other improvements and to issue bonds therefor.

The Legislature also amended an Act prescribing and defining the purposes for which private corporations may be formed in this State; and under the law as amended, no private corporation can in future be organized for the purpose of buying and selling real property in this State.

A law was also passed regulating the descent and distribution of community property upon the dissolution of the marriage by death, where the deceased shall leave child or children or their descendents, in which event the survivor, under the law as amended, is entitled to one half of said property, and the other half to such child or children, or their descendents. This is an important change in the law, in view of the recent decision of the Supreme Court in which it was held that grandchildren could not inherit any portion of the community estate under the law as it stood.

There have been but few noteworthy changes in the Penal Code and Criminal Procedure. The Legislature has amended the law requiring the service of the list of the jurors summoned in capital cases. Also enacted a law prohibiting the unlawful carrying of arms, by adding to the punishment imprisonment in the county jail. Also an Act punishing the dealing in futures, or permitting such business to be conducted on one's premises. Passed an Act for the punishment of any person who, by intimidation or threats of violence, shall attempt to prevent any person from engaging in any lawful employment. Also an Act punishing any person for cursing or abusing another, or a female relation. Also an Act providing that no person shall be convicted of any grade of homicide, unless the body of the deceased, or portions of it, are found and sufficiently identified to establish the death of the person charged to have been killed. The Legislature, mindful of the fact that a just ballot is the only safeguard of good government, passed an Act

making it a felony to knowingly vote illegally at an election, and fixes the punishment not less than two nor more than five years imprisonment.

This comprises a summary of the most important laws, civil and criminal, enacted by the last Legislature, and when considered as a whole, we may congratulate the members of that body on the general result of their labors.

The system of laws, as collated in the Revised Statutes, may well excite the pride and the admiration of the people of Texas, as from a small beginning it is the outgrowth of the accumulated wisdom of her brightest lawyers and ablest statesmen.

The common law of England, itself starting with a few simple rules regulating human conduct, passed through a labyrinth of technicalities, impeded at times by policies of the feudal system, but at length under the patronage of those able lawyers and jurists, moved on its pathway of progress made lustrous with the light of genius and learning, until it finally attained, in the language of Lord Coke, "the perfection of human reason."

The commercial law also had its origin at a time when, according to the Roman Tables, it was the recognized right of creditors to have the body of any insolvent debtor cut to pieces on the third market day, or sold to foreigners beyond the Tiber; but, gathering newness of life from the reflected wisdom of Lord Mansfield, and the lessons of experience drawn from practical life, it has now become a beacon light to modern jurists in deciding upon and adjudicating the rights of men and nations growing out of the commerce of the world. The same spirit of improvement is manifested in the beneficent legislation that marks the modern codes of civilized nations, in sweeping away those sanguinary penalties for criminal offenses, which in former times stained the English Statutes with human blood, and over which humanity had so long wept her unavailing tears.

To the honor of America, be it said, she took the lead in reducing the number of capital felonies, and while in England there were formerly over a hundred capital crimes, there are now in the States of the American Union less than half a dozen offenses to which the enlightened judgment of legislation has affixed the penalty of death. It should be remarked that these beneficent and humane results in legislation have been conceived in the minds and accomplished through the manly efforts of eminent lawyers in our own and other countries. In this, we think, is forever repelled the oft repeated slander, that "to be a good lawyer is to be an indifferent statesman." It is true now, as in the past and must be in the future that, in a government of laws, those who make it their special study to understand and administer the law in its letter and spirit, must continue to be in the judicial department of the service of

their country, the safest counsellors, and in the legislative and executive departments the best and most reliable statesmen. If this be not so, then it logically follows that intelligence is a vice instead of a virtue ; and ignorance in high places a blessing to the country, instead of a curse.

The Legislature at its last session, among the joint resolutions passed for the amendment of the Constitution to be submitted to the vote of the people for adoption, proposed, as an amendment to Article Five, what is known as the Judiciary Article, a resolution creating a Supreme Court to be composed of five members ; but, in regard to the salary to be paid the Judges, and other substantial details, it failed to conform to the amendment, proposed and adopted by this Association at its last annual meeting. As the bill then prepared by an able committee was unanimously adopted by this Association, we vainly hoped that it would receive the earnest support of the Legislature. The legislative amendment was so wide a departure that it met, as it merited, the opposition of the Bar and was buried by the people at the polls.

The Constitution of the Bar Association declares its object to be to advance the science of jurisprudence, promote the uniformity of legislation in the administration of justice throughout the State, uphold the honor of the profession of the law, and encourage cordial intercourse among its members. These high purposes, thus voiced in the organic law, are of a paramount importance, and devolve upon us with special force, the duty and responsibility of using our best endeavors to secure their accomplishment. Unquestionably, if in other countries where the jewelled crown and radiant robe of royalty signalize the exercise of despotic power on the part of the titled few who rule their subjects with unbridled will, the science of the law is revered and respected by the people ; by so much more should it receive our homage in this country where its voice is supreme, and where life, liberty and property and all the blessings we most highly esteem on earth are committed to its guardianship for preservation and protection.

*Gentlemen of the Association :* Before concluding, it is proper that I should pay an humble tribute of respect to the memory of the late honored President of this Association. Brief as was the discharge of his duties, yet his ability, kindness, suavity of temper, and high qualities of head and heart, have built for him in our memories an enduring testimonial to his exalted worth, both as a citizen and lawyer. He ever regarded the profession of the law as one in which distinction could not be gained without merit, and that the price of success was patient and unremitting toil. He was a successful practitioner before the courts, and yet gained time from his laborious engagements to give to the profession a work of considerable merit, requiring in its preparation extensive research,

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close analysis, and the exercise of those higher powers of mind necessary to the deduction of reason and justice. Possessed of these noble attributes the Honorable A. J. Peeler was cut off in the blossom of his days, while yet the vigor of manhood flushed his cheeks, and the full harvest of glory was ungathered.

“Right worthily he lived right nobly he died,” but he left to his profession the legacy of a bright example. May we all profit by it.

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ANNUAL ADDRESS

DELIVERED BEFORE THE

TEXAS BAR ASSOCIATION

BY

HON. C. C. GARRETT,

OF BRENHAM, OF THE WASHINGTON COUNTY BAR.

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*Mr. President and Gentlemen of the Association :*

The combined system of Federal and State government in this country, gives rise to many questions of the greatest importance in its administration.

Apart from those that are fundamental in their nature and have divided the people into political parties from the adoption of the Federal Constitution to the present time, there are two classes which present themselves forcibly and practically to the lawyers of the country, but as affecting all classes of the people. These questions are conflicts in the construction of the laws by the courts, both between Federal and State, and the State Courts themselves, and a want of uniformity of legislation between the States on subjects of universal concern, such as laws relating to marriage and divorce, registration of deeds, and jurisdiction over the persons and property of non-residents.

Notwithstanding the great encroachments made on the reserved rights of the States by the growth of the federal idea, from judicial interpretation of the Constitution, as well as from political agitations and results, there is still left to the States an autonomy that in very many respects makes them almost as foreign countries to each other. But by reason of contiguity, constant changes in population from agricultural to commercial and other pursuits not allied with the soil, increase of intercommunication and the breaking down of natural barriers by railroad and telegraph facilities, although there may not be an external hostile force threatening either the political and commercial integrity of the Union, to consolidate it, the federal idea will continue to grow, and from inter-

nal causes must grow, unless the domestic laws of the several States assume a homogeneity by reason of intelligent co-operative legislation.

Unless this is accomplished by the State Legislatures themselves, the courts will legislate, because principles of government grow and constitutions with them. General clauses in written constitutions furnish scope for judicial interpretation, and with the judiciary as the final arbiter question in time come to be federal questions that were never thought to be such by the fathers; and a constitution framed for thirteen small colonies with a straggling population and no previous experience in statecraft, or a republican form of government, is ascertained to be sufficient for the wants of an immense area of territory, a teeming population of many millions, and all the many and varied phases of an age of steam and electricity, railroad magnates and anarchists. It was once believed that to coin money could not authorize the printing of paper bills to circulate as a legal tender; and the modern spectacle of courts building and operating railroads is something that the jurists of the constitution could have never dreamed of in their philosophy. All has been conceded to the Federal power by the States that can be safely conceded, and it is neither practical nor prudent to surrender to that power the right to legislate for the States further than it has already assumed; and while there are subjects upon which it is not only desirable but important that there should be uniform legislation between the States, that effect may be brought about by an intelligent co-operation of the lawyers of the country through their Bar Associations, both State and national. The subject has already received some attention; but more than a passing attention is required. Legislation must be formulated, and the decisions of the courts of last resort brought into harmony. That a genuine law reform is needed none will deny; but that it should be left to the Federal authority, few will concede. A persuasive undertaking to reform and harmonize the laws of forty-seven States and territories may appear quixotic, but the endeavor will be aided by reason and the business interests of the country, and is not altogether hopeless.

The purpose of this paper is more particularly to discuss the jurisdiction taken under State statutes of the persons and property of non-residents, with reference especially to the conflict between the law of this State and the decisions of our Supreme Court and the Supreme Court of the United States. Brief mention only will be made of the other subjects referred to.

Whether right or wrong, the law as delivered by the Supreme Court of the United States must be accepted as final by the citizens of all the States, and in all questions which are determined by it to be general or federal, it is the part of wisdom in the State



courts to acquiesce. Wherever a State statute or a decision of a State court is found obnoxious to a settled line of decisions of the Federal Supreme Court, conservatism demands that the court of last resort should be followed both by the necessary legislation and the deliverances of the State courts. No obsequious compliance is implied, but only a conscientious yielding to the higher tribunal.

**MARRIAGE AND DIVORCE.**—Laws so universal in their application as those concerning marriage and divorce, should be uniform throughout all the States and Territories. They affect the status of the citizen, and there can be no good reason that what might be lawful wedlock on one side of an imaginary line should be an illegal or incestuous marriage on the other; nor that the place of its birth should determine the question of the legitimacy of the child. It is idle for a State to prohibit a marriage that may be lawful just across the line in another State, and it is not consistent with the dignity that should attach to the law that the consent of parents may be dispensed with by a visit to Gretna Green. The diversity of the laws concerning marriage among the several States give rise to many legal questions, touching not only the status of the persons, but involving property rights. Such questions have arisen in all possible phases and have been decided by the courts in all manner of ways; but uniformity of legislation may induce uniformity of construction.

It would seem to be the policy of some of the States to afford easy and expeditious methods of dissolving marriages while in others such dissolution is made more difficult to be effected. The same reasons may be urged for uniform divorce laws as for uniform legislation concerning marriage. If no better could be adduced, the argument *ab inconvenienti* should apply. Why should a citizen of New York be forced to go to Chicago for his divorce? or, why should citizens of Texas be put to the trouble of a visit to the Indian Territory to be lawfully married?

**REGISTRATION OF DEEDS.**—Throughout the United States a deed legally admitted to record is constructive notice of its existence and recitals to all persons to be affected thereby whether they have actual notice thereof or not. Each State and territory has laws prescribing the formality with which deeds shall be executed, and the requirements for admission to record. Their execution must be acknowledged by the grantor, or proved by a witness. Forms of acknowledgment and proof are prescribed, and here the confusion commences. A certificate of acknowledgment that is valid in one State may be invalid in another, either for want of due form, or incapacity in the officer before whom the acknowledgment is made. Mistakes are frequently made by non-residents in conveying lands, on account of difference in the registration laws

between the States, and property is lost by defective acknowledgment or proof of the execution of the deed. In some of the States the deed is required to be recorded within a prescribed time, in default of which it does not operate as notice, although it may have been admitted of record. This want of uniformity in the laws affecting registration of deeds causes much annoyance to the conveyancer, the unnecessary presentation of legal questions which must be rightly decided at the peril of the grantee of the land, and many mistakes that unsettle titles and involve the loss of property.

**JURISDICTION OVER THE PERSONS AND PROPERTY OF NON-RESIDENTS.**—Under the statutes of this State, the property of a non-resident may be attached for debt in the same manner as that of a resident. There is no distinction made. Oath must be made that the defendant is justly indebted to the plaintiff, and of the amount of the demand, and of the fact of non-residence. The plaintiff must also swear that the attachment is not sued out for the purpose of injuring or harrassing the defendant, and that he will probably lose his debt unless such attachment is issued. Suit must have been duly instituted. It is not necessary that the demand shall have become due, but there can be no judgment until it shall have matured. Before the issuance of the writ, the plaintiff must execute a bond with two or more good and sufficient sureties, payable to the defendant in a sum not less than double the amount of the debt sworn to be due, conditioned that the plaintiff will prosecute his suit to effect, and will pay all such damages and costs as shall be adjudged against him for wrongfully suing out such attachment, whereupon a writ of attachment will issue. No judgment can be rendered without citation to the defendant. Such citation may be made in either of two ways. It may be made by delivering to the defendant a notice requiring him to appear and answer the plaintiff's petition, a certified copy of which must accompany the notice stating the time and place of holding the court. There are other requisites of the notice prescribed by the statute. After service in the manner required, and return thereof, the defendant must appear and answer in the same manner and under the same penalties as if he had been personally served with a citation within the State. It is not necessary that the case shall be continued as in citation by publication.

The other method is citation by publication in a newspaper for four successive weeks, giving a brief statement of the cause of action, and requiring the defendant to appear at a term of the court named. On the return of the citation, the cause must be continued for a term to perfect service, and if at the next term of the court the defendant does not appear, the court will appoint an attorney to defend in his behalf and the case will proceed to

judgment as in ordinary cases. After judgment has been rendered, a statement of the evidence approved and signed by the judge must be filed with the papers of the cause as a part of the record thereof. Judgment may be rendered against the defendant *in personam* for whatever amount may be found to be due to the plaintiff, directing the attached property to be sold in satisfaction thereof, and awarding execution against the defendant for the balance remaining unpaid to be levied upon any property of the defendant that may be found within the jurisdiction of the court. It is not necessary however to confer jurisdiction on the court to render judgment, that property of the non-resident should be first attached, such jurisdiction is assumed upon the constructive service whether by notice delivered to the defendant outside the State, or by publication, and judgment will be rendered against the defendant *in personam* for the amount ascertained to be due; and execution awarded, which may be levied in satisfaction of the judgment on any property of the defendant found within the State, that is to say within the jurisdiction of the court. Such is the statute law of this State, supported by the decisions of the Supreme Court. Other States have similar laws.

Prior to the adoption of the Revised Statutes of Texas, an act of the Legislature passed in 1848, authorized judicial attachment by which the property of a non-resident might be seized in order to compel him to appear and answer to the plaintiff's cause of action. If the defendant appeared, his appearance operated as a quashal of the attachment; and, if he did not appear, the court might render judgment and order the property sold in satisfaction thereof. Citation in such case did not seem to be necessary. [13 Tex., 269; 21 Tex., 971.] Under a law of the Republic passed December 18, 1837, and repealed by the attachment law of 1839, attachment might issue for torts, that is against the property of Mexicans stealing and driving off cattle belonging to citizens.

There can be no attachment in this State of the property of a non-resident, at the suit of any person who cannot make oath that such non-resident is indebted to him and state the amount of the indebtedness; but a non-resident may be sued for any cause of action in the same manner as a resident and proceeding to judgment had against him upon constructive service, and the judgment satisfied by levy upon and sale of any property within the State belonging to him. But what is the judgment worth? It is subject to collateral attack in the Federal courts and most of the State courts, as a void judgment, rendered without jurisdiction for the want of notice to the defendant; and it is not operative to pass title to property sold under it. It may be and is urged in support of the law in force in this State, that each State is sovereign and may subject the property of non-residents found within its juris-

diction to the just demands of its citizens, and the citizens of other States resorting to its courts; that it may do this in its own way; that it is immaterial whether the property is brought within the jurisdiction before or after judgment; and whether it is seized before or after judgment. A manner of citation is prescribed that is most likely to reach the defendant, and other safeguards are provided to prevent fraud, as requiring the continuance of the cause to the second term of the court, the appointment of an attorney to defend, and a statement of the facts proved at the trial to be filed with the papers, so that the defendant might at any time within the two years allowed for writ of error, have the cause revised by the Supreme Court. Such requirements would seem to be reasonable; but the principle of public law obtains that no State can exercise direct jurisdiction and authority over persons or property without its territory.

It is well established by the decided weight of authority in the State courts and is the well settled rule of the Supreme Court of the United States, that a State court cannot acquire jurisdiction over the person of a non-resident without service of process within the State, or by his voluntary appearance, nor can it do more where property of a non-resident is attached than to subject the property alone, it cannot proceed to render a judgment that would support an execution against property not already seized, or sustain an action thereon in another State. There being no jurisdiction to render a judgment *in personam*, such a judgment would be void. It could not be aided by the seizure of property. It is only "in virtue of the State's jurisdiction over the property of the non-residents, situated within its limits, that its tribunals can inquire into that non-resident's obligations to its own citizens, and the inquiry can then be carried only to the extent necessary to the control and disposition of the property."

The property may be attached and brought under the jurisdiction of the court, and sold to satisfy the demand of the plaintiff, which may be inquired into for that purpose. Although not strictly, as in admiralty cases, it is a proceeding in *rem*, and the attachment cannot confer jurisdiction on the court over the person of the non-resident so as to enable it to render a personal judgment against him.

There was an old case in New York brought on a personal judgment rendered by a Massachusetts court, in a suit brought against a non-resident commenced by attaching a bedstead. It was held that only the attached property could be bound by the judgment of the Massachusetts court. [5 Johns, 37.]

It is unnecessary to pursue the discussion or to review the authorities, for it remains that a personal judgment of any of our State courts, rendered against a non-resident served with notice in either

of the modes pointed out by the statute is void ; and while the owner of such a judgment may be fortified by the constitutional provisions that the "citizens of each State shall be entitled to all privileges of citizens in the several States," and that "full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State," he cannot maintain an action on his judgment in the courts of another State, because it is contrary to a principle of public law for a State court to take jurisdiction of the person of a non-resident without personal service of notice on him within the State, or his voluntary appearance, and is also held to be in violation of the fourteenth amendment, which prevents a State from depriving any person of life, liberty or property, without due process of law.

Notwithstanding the fact that such judgments and the sale of property thereunder may be upheld by the decisions of the State courts, the careful practitioner will always institute his suits against non-residents by the attachment of property ; he will see that the statutory means of citation is strictly followed, and when he asks for judgment, he will not undertake to do more than to subject the property that has been seized to its satisfaction.

In his dissenting opinion in *Pennoyer vs. Neff* [95 U. S. 714], Justice Hunt said that the rule had been otherwise, and that the decision in that case overthrew a well settled rule of property. Since then in other decisions of that court, the doctrine has been reaffirmed and is now definitely settled. If it was not before, it has now become the well settled rule of law and should receive the sanction of the State courts, and State laws should be conformed therewith.

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PROCEEDINGS

OF THE

SEVENTH \* ANNUAL \* SESSION

OF THE

TEXAS BAR ASSOCIATION

HELD IN THE

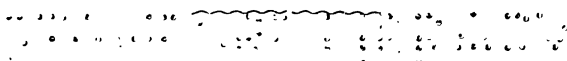
CITY OF FORT WORTH, JULY 4 AND 5, 1888.

WITH THE

CONSTITUTION AND BY-LAWS

ALSO

OFFICERS, STANDING COMMITTEES AND ROLL OF MEMBERS  
FOR THE YEAR 1888-89.



AUSTIN :

PRINTED BY ORDER OF THE ASSOCIATION,

1888.

L10966

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These Proceedings are published by authority and distributed to members by the Association.

CHARLES S. MORSE, *Secretary*.

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The eighth annual session of the Association will be held in the City of Galveston, on the second Wednesday in July, A. D. 1889.

# TEXAS † BAR † ASSOCIATION.

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## CONSTITUTION.

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### ARTICLE I.—NAME AND OBJECTS OF THE ASSOCIATION.

SECTION 1. This Association shall be called the TEXAS BAR ASSOCIATION.

SEC. 2. Its objects shall be to advance the science of jurisprudence, promote the uniformity of legislation in the administration of justice throughout the State, uphold the honor of the profession of the law, and encourage cordial intercourse among its members.

### ARTICLE II.—MEMBERSHIP.

SECTION I. Any attorney of the Texas bar, in honorable standing, upon his written application, may be admitted to membership at any regular meeting of the Association. Said application must be endorsed by three members of the Association, and a fee of \$5 shall accompany the same—\$2.50 initiation fee, and \$2.50 annual dues.

SEC. 2. Such application shall be referred to the Board of Directors, who shall report the same to the Association; and if said report be favorable, a ballot shall be taken, and if four-fifths of the members voting shall be in favor of the applicant he shall be declared elected; and if he shall sign the Constitution and pay his admission fee within ten days after he shall be notified of his election, he shall be placed on the roll of members.

### ARTICLE III.—OFFICERS AND THEIR DUTIES.

SECTION 1. The officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, who shall be chosen by ballot at a regular meeting, by a majority of the members present and voting.

SEC. 2. There shall be a Board of Directors, five in number, elected at the same time and in the same manner with the officers; and the President and Vice-President shall be ex-officio members of the Board.

SEC. 3. The officers and Directors shall hold their places for one year, and until their successors shall be elected; provided, that the same person shall not be elected President two years in succession.



SEC. 4. The duties of officers shall be such as usually devolve upon such positions, and may be regulated and prescribed from time to time by the Constitution, By-Laws or resolutions of the Association.

SEC. 5. The Board of Directors shall have exclusive authority, and shall exercise executive supervision over the affairs of the Association between its meetings.

SEC. 6. Vacancies in the offices and Board of Directors shall be filled by the Board, the concurrence of a majority of whom shall be necessary to a choice.

#### ARTICLE IV.—COMMITTEES.

SECTION 1. The following committees shall be appointed annually by the President for the year ensuing, and shall consist of five members each: On Jurisprudence and Law Reform; on Judicial Administration and Remedial Procedure; on Legal Education and Admission to the Bar; on Commercial Law; on Publication; on Grievances and Discipline.

SEC. 2. A Committee of three, of whom the Secretary shall always be one, shall be appointed by the President at each annual meeting of the Association, whose duty it shall be to report to the next meeting the names of all members who shall in the interval have died, with such notices of them as shall, in the discretion of the committee be proper.

#### ARTICLE V.—GENERAL POWERS.

SECTION 1. This Association shall have power to impose fines, assess fees and establish by-laws for its government. It shall have power to remove officers, and suspend or expel members for good cause, upon written charges exhibited against them by a member, and due notice given of the charges, and of the time they will be brought before the Association.

SEC. 2. The By-Laws shall prescribe the assessments to be levied on the members for the support of the Association and the promotion of its objects.

#### ARTICLE VI.—QUORUM.

SECTION 1. Twenty-five members in regular standing shall constitute a quorum for the transaction of business.

#### ARTICLE VII.—ANNUAL ADDRESS.

SECTION 1. The President shall open each meeting of the Association with an address, in which he shall communicate the noteworthy changes in statutory and constitutional law, and especially such changes as effect the development and progress of the law and the administration of justice.

#### ARTICLE VIII.—MEETINGS.

SECTION 1. A majority of the members present at an annual meeting of this Association shall designate the time and place for holding the next annual meeting.

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ARTICLE IX.—AMENDMENTS.

SECTION 1. All propositions to alter, amend or add to this Constitution shall be made in writing at a meeting of the Association, and filed with the Secretary at least one month before being acted upon, and shall not be adopted without the concurrence of two thirds of all the members present.

## ARTICLE X.—DUES.

SECTION 1. Each member of the Association shall pay to the Secretary the sum of \$2.50 as annual dues.

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BY-LAWS.

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## ARTICLE I.—PRESIDING OFFICERS.

SECTION 1. The President, and in his absence the Vice-President, shall preside at all meetings of the Association; if neither of these officers be present, a President pro tem. shall be chosen by and from the attending members.

## ARTICLE II.—ADDRESSES AND ESSAYS.

SECTION 1. The Board of Directors at its first meeting after each annual meeting, shall select some person to make an address at the next annual meeting, and not exceeding six persons to read papers.

## ARTICLE III.—ANNUAL MEETINGS AND ORDER OF BUSINESS.

SECTION 1. The order of exercises at the annual meetings shall be as follows:

1. Opening address of the President.
  2. The nomination and election of members.
  3. Report of the Board of Directors.
  4. Election of the Board of Directors.
  5. Reports of the Secretary and Treasurer.
  6. Reports of Standing Committees, as follows: On Jurisprudence and Law Reform; on Judicial Administration and Remedial Procedure; on Legal Education and Admission to the Bar; on Commercial Law; on Publication; on Grievances and Discipline.
  7. Reports of special committees.
  8. The nomination of officers.
  9. Miscellaneous business.
  10. The election of officers.
  11. The annual address, to be delivered by the person selected by the Board of Directors, shall be made at the morning session of the second day of the annual meeting.
- SEC. 2. This order of business may be changed at any meeting by a vote

of a majority of the members present; and, except as otherwise provided by the Constitution or By-Laws, the usual parliamentary rules and orders will govern the proceedings.

SEC. 3. No person shall speak more than ten minutes at a time, nor more than twice on the same subject.

SEC. 4. A stenographer shall be employed at each annual meeting.

SEC. 5. Each county bar association may annually appoint delegates, not exceeding three in number, to the next meeting of the Association, and such delegates shall be entitled to all the privileges of membership at and during said meeting.

SEC. 6. All papers read before the Association shall be lodged with the Secretary. The annual address of the President, the reports of the committees and proceedings of the annual meetings shall be printed, but no other address made or paper read or presented shall be printed except by order of the Committee on Publication.

SEC. 7. The Board of Directors shall, as soon as parties have been selected to deliver the annual address and read essays, notify the Secretary of this Association of such selections, and of any other matters of especial interest to be brought before the next annual meeting.

SEC. 8. The Secretary shall be and is hereby required to mail each member of the Association, ten days before each annual meeting, a written or printed notice of the time and place of such meeting, giving a statement of the addresses to be delivered, the papers to be read and any other matters of especial interest, and shall also cause such notice to be published.

#### ARTICLE IV.—MEMBERSHIP AND DUES.

SECTION 1. The initiation fee to entitle a person to membership shall be five dollars, which shall include the annual dues for the first year.

SEC. 2. The annual dues shall be payable at the annual meeting in advance, and should any member neglect to pay them for any year, at or before the next annual meeting, he shall cease to be a member. The Secretary shall give notice of this By-Law, within sixty days after each meeting, to all members in default.

#### ARTICLE V.—OFFICERS AND COMMITTEES.

SECTION 1. The terms of office of all officers elected at the annual meeting shall commence at the adjournment thereof, except the Board of Directors, whose term of office shall commence immediately upon their election.

SEC. 2. The President shall appoint all committees, except the Committee on Publication, within thirty days after the annual meeting, and shall announce them to the Secretary, who shall promptly give notice to the persons appointed. The Committee on Publication shall be appointed on the first day of each meeting.

SEC. 3. The Secretary's and Treasurer's reports shall be examined and audited by the Board of Directors before their presentation to the Association.

SEC. 4. The Board of Directors and all standing committees shall meet on the day preceeding each annual meeting, at the place where the same is to

be held, at such hour as their respective chairmen shall appoint, and should any member of any committee be absent, the vacancy may be filled by the members of the committee present.

SEC. 5. The Committee on Publication shall meet within one month after each annual meeting, at such time and place as the chairman shall appoint.

SEC. 6. Special meetings of any committee shall be held at such times and places as the chairman thereof may appoint; reasonable notice shall be given by him to each member by mail.

#### ARTICLE VI.—DUTIES OF COMMITTEES.

SECTION 1. It shall be the duty of the Committee on Jurisprudence and Law Reform to consider and report to the Association such amendments to the law as in its opinion should be adopted; also to scrutinize proposed changes in the law, and, when necessary, report upon the same.

SEC. 2. It shall be the duty of the Committee on Judicial Administration and Remedial Procedure to observe the practical working of the judicial system of the State, and recommend by written or printed report, from time to time, any changes therein, which observation or experience may suggest.

SEC. 3. It shall be the duty of the Committee on Legal Education and Admission to the Bar to report the most suitable means for promoting and facilitating the study of the law, and the necessity or propriety of elevating the standard of qualifications for admission to the bar, and the best means for accomplishing that object.

SEC. 4. It shall be the duty of the Committee on Commercial Law to report the best means to produce uniformity in commercial law and usages.

SEC. 5. The Committee on Publication shall pass upon and have printed all papers, should they deem them of sufficient importance, except as it is otherwise provided by the Constitution and By-Laws.

SEC. 6. The Committee on Grievances and Discipline shall report as to the best means of upholding the honor and dignity of the law in the professional intercourse among the members of the Association. All complaints against the members of this Association shall be presented to this committee, and if the committee shall be of the opinion that the matters alleged are of sufficient importance, they will determine upon the course of procedure for the trial of the same; and shall give notice to the party charged of the nature of the complaint and the time of the trial thereof by the Association; all of which the complainant shall also be notified of by the committee.

#### ARTICLE VII.—RESOLUTIONS.

SECTION 1. No resolution complimentary to any officer or member, for any service performed, paper read, or address delivered, shall be considered by this Association.

#### ARTICLE VIII.—AMENDMENTS.

SECTION 1. These By-Laws may be amended at any meeting of the Association, by a vote of two-thirds of those present, provided that a copy of the proposed amendment shall have been filed with the Secretary on or before the first day of such annual meeting.

PROCEEDINGS  
OF THE  
SEVENTH \* ANNUAL \* SESSION  
OF THE  
TEXAS \* BAR \* ASSOCIATION  
HELD IN THE  
CITY OF FORT WORTH, JULY 4 AND 5, 1888.

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*FIRST DAY.*—MORNING SESSION.

FORT WORTH, TEXAS, July 4, 1888.

The seventh annual session of the Texas Bar Association met in the city of Fort Worth, Texas, on Wednesday, July 4, A. D., 1888, at 11 o'clock, a. m.

The meeting was called to order by Vice-President M. D. HERRING, who notified the Association of the severe illness of President W. L. CRAWFORD.

The following officers were present :

M. D. HERRING, Vice-President.

CHAS. S. MORSE, Secretary.

NORMAN G. KITTRELL, of the Board of Directors.

A. M. CARTER, Chairman of the Committee on Judicial Administration and Remedial Procedure.

HENRY SAYLES, of the Committee on Legal Education and Admission to the Bar.

S. C. PADELFORD, of the Committee on Commercial Law.

R. M. WYNNE, Chairman of Committee on Grievances and Discipline.

A quorum being present, roll call was dispensed with and the Vice-President announced the Association duly opened.

On motion of J. C. SCOTT, ESQ., of Fort Worth, A. M. JACKSON, JR., of Austin, was elected to fill a vacancy on the Board of Directors, and the Board then selected Hon. F. CHAS. HUME, H. W. LIGHTFOOT and J. C. SCOTT to fill the remaining vacancies.

The first order of business being the nomination and election of members, the Board of Directors made the following report :

*To the Vice-President and Members of the Texas Bar Association:*

GENTLEMEN—Your Board of Directors have duly passed upon the applications of the following attorneys for membership—their applications having been presented in due form, properly indorsed, and accompanied with the initiation fee: Robt. H. West, of Dallas; S. B. Maxey, of Paris; Sam J. Hunter, of Fort Worth; B. J. Houston, of Fort Worth; R. J. Hill, of Austin; W. W. Flood, of Wichita Falls; A. H. Carrigan, of Wichita Falls; F. W. Ball, of Fort Worth; R. D. Rugeley, of Montague; H. B. Wright, of Clarksville; Gus Shaw, of Clarksville; and recommend their election.

NORMAN G. KITTRELL,  
H. W. LIGHTFOOT,  
JAS. C. SCOTT,  
F. CHAS. HUME,  
A. M. JACKSON, JR.

On motion the report was received, and the applicants duly elected as members of the Association.

The Vice-President appointed the following Committee on publication :

F. G. MORRIS, of Austin ; R. M. WYNNE, of Fort Worth ; W. D. WILLIAMS, of Austin ; J. D. CUNNINGHAM, of Kaufman ; L. B. DAVIS, of Cleburne.

The following members of the Board of Directors for the ensuing year were then elected :

T. N. WAUL, of Galveston ; A. M. CARTER, of Fort Worth ; H. W. LIGHTFOOT, of Paris ; A. M. JACKSON, JR., of Austin ; HENRY SAYLES, of Abilene.

The Secretary made the following report, which was adopted :

**Secretary's Report.**

DALLAS, TEXAS, July 4, 1888.

*To the President and Members of the Texas Bar Association :*

GENTLEMEN—I have the honor to submit herewith my annual report as

Secretary of the Texas Bar Association for the year ending July 1, 1888, which has been referred to, and approved by the Board of Directors.

#### RECEIPTS.

|                                                      |   |   |   |          |
|------------------------------------------------------|---|---|---|----------|
| Initiation fees from 3 new members at \$2.50 each    | - | - | - | \$ 7.50  |
| Annual dues received up to July 1st, from 93 members | - | - | - | 222.50   |
| Amount drawn from Treasurer on warrant               | - | - | - | 77.75    |
| Total                                                | - | - | - | \$307.75 |

#### DISBURSEMENTS.

|                                                       |   |   |   |          |
|-------------------------------------------------------|---|---|---|----------|
| Printing proceedings of 1887, per warrant             | - | - | - | \$ 77.75 |
| Paid for postage, wrappers and postal cards           | - | - | - | 45.10    |
| Secretary's salary from July 1, 1887, to July 1, 1888 | - | - | - | 120.00   |
| Amount placed in Treasury, per receipt                | - | - | - | 64.90    |
| Total,                                                | - | - | - | \$307.75 |

Very respectfully submitted,

CHAS. S. MORSE, Secretary.

#### Treasurer's Report.

*To the President and Members of the Texas Bar Association :*

GENTLEMEN—I have the honor to submit the following as my annual report as Treasurer of the Texas Bar Association, for the year ending July 1st, 1888.

##### DR.

|                                |   |   |   |          |
|--------------------------------|---|---|---|----------|
| Amount on hand per last report | - | - | - | \$361.59 |
| Amount received from Secretary | - | - | - | 64.90    |
| Total,                         | - | - | - | \$426.49 |

##### CR.

|                                               |   |   |   |          |
|-----------------------------------------------|---|---|---|----------|
| Amount paid warrant in favor E. Von Boeckmann | - | - | - | 77.75    |
| To balance on hand                            | - | - | - | 348.74   |
| Total,                                        | - | - | - | \$426.49 |

All of which is respectfully submitted.

ROBT. G. WEST, Treasurer.

The reports of standing committees, was postponed until to-morrow morning, and on motion the Association adjourned until to-morrow morning, at 10 o'clock.

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*SECOND DAY.—MORNING SESSION.*

FORT WORTH, July 5, 1888.

The Association was called to order by Vice-President M. D. HERRING. Quorum present, roll call suspended, and reading of minutes of yesterday dispensed with.

The first order of business being the delivery of the annual address, the Vice-President introduced the HON. F. CHAS. HUME, of Galveston, who delivered the annual address of the Association. [See Appendix.]

HON. B. G. BIDWELL, of the Committee of Legal Education and Admission to the Bar, made a verbal report for the Committee.

HON. S. C. PADEFORD, of the Committee on Commercial Law, made the following report. [See Appendix.]

HON. R. M. WYNNE, Chairman of the Committee on Grievances and Discipline, made a verbal report for the Committee.

The next order of business being the election of officers. The result was as follows :

F. CHAS. HUME, of Galveston, President ; R. M. WYNNE, of Fort Worth, Vice-President ; CHAS. S. MORSE, of Austin, Secretary ; ROBERT G. WEST, of Austin, Treasurer.

The president-elect read a telegraphic invitation from the Bar of Galveston to hold the next annual meeting of the Association in that city. The invitation was accepted, and on motion Galveston was selected as the place, and the second Wednesday in July, 1889 as the time, for holding the next annual meeting.

HON. H. W. LIGHTFOOT offered the following amendment to the By-laws, which by unanimous consent was considered and adopted :

Be it enacted, that Art. III of the By-laws be amended by adding thereto Sections 7 and 8, as follows : •

SEC. 7. The Board of Directors shall, as soon as parties have been selected to deliver the annual address and read essays, notify the Secretary of this Association of such selections, and of any other matters of especial interest to be brought before the next annual meeting.



SEC 8. The Secretary shall be, and he is hereby required to mail to each member of the Association, ten days before each annual meeting, a written or printed notice of the time and place of such meeting, giving a statement of the addresses to be delivered, the papers to be read and any other matters of especial interest, and shall also cause such notice to be published.

On motion the President and Secretary were requested to correspond with the proper railway officials, and, if possible, obtain special rates over all railroads for attorneys wishing to attend the next annual meeting at Galveston.

On motion the Committee for the ensuing year on Deceased Members, were requested to consider in their report the death of all members, whose deaths have been reported up to the time of making their report.

The following were elected as delegates to the American Bar Association: THOS. J. DEVINE, GEORGE CLARK, H. W. LIGHTFOOT and JOHN E. McCOMB.

COL. R. M. WYNNE moved that a Committee of three be appointed to prepare an address to the Bar of the State in the interests of the Association, and to urge upon them the necessity and importance of their attending the next annual meeting. Motion carried, and on motion of J. D. CUNNINGHAM, ESQ., the Secretary was instructed to have 1000 copies of the address published for distribution; motion adopted and the following Committee was afterwards appointed by the newly elected President: HON. SETH SHEPARD, A. M. JACKSON, JR., J. D. CUNNINGHAM.

On motion of S. C. PADELFORD, ESQ., the Board of Directors were requested to invite the Hon. L. Q. C. LAMAR, Associate Justice of the Supreme Court of the United States, to be present and deliver an address at the next annual meeting of the Association.

HON. F. CHAS HUME, President-elect, being escorted to the Chair, was introduced and installed as President of the Association for the ensuing year. President HUME delivered a short address, after which, on motion of L. B. DAVIS, ESQ., the Association adjourned to meet in Galveston on the second Wednesday in July, A. D., 1889.

CHAS. S. MORSE, Secretary.

## OFFICERS AND COMMITTEES.

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|                          |                                 |            |
|--------------------------|---------------------------------|------------|
| F. CHAS. HUME . . . . .  | <i>President</i> . . . . .      | Galveston  |
| R. M. WYNNE . . . . .    | <i>Vice-President</i> . . . . . | Fort Worth |
| CHAS. S. MORSE . . . . . | <i>Secretary</i> . . . . .      | Austin     |
| ROBT. G. WEST . . . . .  | <i>Treasurer</i> . . . . .      | Austin     |

### DIRECTORS.

|                            |            |
|----------------------------|------------|
| T. N. Waul . . . . .       | Galveston  |
| A. M. Carter . . . . .     | Fort Worth |
| H. W. Lightfoot . . . . .  | Paris      |
| A. M. Jackson, jr. . . . . | Austin     |
| Henry Sayles . . . . .     | Abilene    |

### *Committee on Jurisprudence and Law Reform.*

|                            |             |
|----------------------------|-------------|
| Robert G. Street . . . . . | Galveston   |
| P. E. Peareson . . . . .   | Richmond    |
| Oscar Bergstrom . . . . .  | San Antonio |
| A. P. McKinnon . . . . .   | Hillsboro   |
| W. L. Prather . . . . .    | Waco        |

### *Committee on Judicial Administration and Remedial Procedure.*

|                         |          |
|-------------------------|----------|
| B. H. Bassett . . . . . | Brenham  |
| A. T. Watts . . . . .   | Dallas   |
| W. H. Allen . . . . .   | Terrell  |
| A. J. Harris . . . . .  | Belton   |
| R. W. Stayton . . . . . | Victoria |

### *Committee on Legal Education and Admission to the Bar.*

|                        |             |
|------------------------|-------------|
| F. G. Morris . . . . . | Austin      |
| F. W. Ball . . . . .   | Fort Worth  |
| C. L. Potter . . . . . | Gainesville |
| L. B. Davis . . . . .  | Cleburne    |
| R. H. Phelps . . . . . | LaGrange    |

*Committee on Commercial Law.*

|                            |            |
|----------------------------|------------|
| E. B. Perkins . . . . .    | Greenville |
| J. Z. H. Scott . . . . .   | Galveston  |
| J. Y. Hogsett . . . . .    | Fort Worth |
| W. A. Carrington . . . . . | Houston    |
| R. D. Rugeley . . . . .    | Montague   |

*Committee on Grievances and Discipline.*

|                             |           |
|-----------------------------|-----------|
| James A. Baker, jr. . . . . | Houston   |
| John B. Rector . . . . .    | Austin    |
| O. C. Kirven . . . . .      | Fairfield |
| Robert L. Ball . . . . .    | Colorado  |

*Committee on Deceased Members.*

|                                            |          |
|--------------------------------------------|----------|
| Norman G. Kittrell . . . . .               | Jewett   |
| W. S. Delany . . . . .                     | Columbus |
| Chas. S. Morse, <i>Secretary</i> . . . . . | Austin   |

*Special Committee on Address to the Bar.*

|                             |         |
|-----------------------------|---------|
| Seth Shepard . . . . .      | Dallas  |
| A. M. Jackson, Jr . . . . . | Austin  |
| J. D. Cunningham . . . . .  | Kaufman |

*Delegates to American Bar Association.*

|                           |             |
|---------------------------|-------------|
| Thos. J. Devine . . . . . | San Antonio |
| George Clark . . . . .    | Waco        |
| H. W. Lightfoot . . . . . | Paris       |
| John E. McComb . . . . .  | Montgomery  |

[NOTE.—The President of the Association desires that the Chairman of each committee put himself in communication at once with each member of his committee, and that each committee begin without delay to prepare the material for a report. The selection of the committee has been made with the expectation and belief that each member of each committee will not only discharge the full measure of his duty in making a report, but that he will be personally present at the next annual meeting.]

# ROLL OF MEMBERS.

|                          |               |                         |               |
|--------------------------|---------------|-------------------------|---------------|
| Abbott, Jo.....          | Hillsboro     | Clark, W. H.....        | Dallas        |
| Acker, Walter.....       | Lampasas      | Cleveland, C. L.....    | Galveston     |
| Alexander, L. C.....     | Waco          | Coke, Henry C.....      | Dallas        |
| Allen, W. H.....         | Terrell       | Conner, T. H.....       | Eastland      |
| Anderson, James M.....   | Waco          | Cooper, J. F.....       | Fort Worth    |
| Andrews, R. W.....       | Waco          | Copeland, John H.....   | San Antonio   |
| Archer, Osceola.....     | Austin        | Coughanour, R. D.....   | Dallas        |
| Atkinson, W. M.....      | Gonzales      | Crain, W. H.....        | Hallettsville |
| Atlee, E. A.....         | Laredo        | Crawford, M. L.....     | Dallas        |
| Austin, Wm. J.....       | Denton        | Crawford, W. L.....     | Dallas        |
| Aubry, Wm.....           | San Antonio   | Croft, William.....     | Corsicana     |
|                          |               | Croom, J. L., jr.....   | Belton        |
| Baker, James A., sr..... | Houston       | Culberson, Chas. A..... | Jefferson     |
| Baker, James A., jr..... | Houston       | Cunningham, J. D.....   | Kaufman       |
| Bailey, W. J.....        | Fort Worth    |                         |               |
| Ball, F. W.....          | Fort Worth    | Davidson, W. L.....     | Richmond      |
| Ball, R. L.....          | Colorado      | Davis, L. B.....        | Cleburne      |
| Bassett, B. H.....       | Brenham       | DeArmond, R.....        | McKinney      |
| Beall, T. J.....         | El Paso       | DeBerry, A. W.....      | Fort Worth    |
| Bergstrom, Oscar.....    | San Antonio   | Delany, W. S.....       | Columbus      |
| Bidwell, B. G.....       | Weatherford   | Dennis, Isaac N.....    | Wharton       |
| Blair, T. A.....         | Waco          | Denson, W. B.....       | Galveston     |
| Blake, S. R.....         | Bellville     | Dickson, Jos. M.....    | Dallas        |
| Blanding, J. M.....      | Corsicana     | Dodd, Thos. W.....      | Laredo        |
| Bledsoe, D. T.....       | Cleburne      | Dowell, John.....       | Austin        |
| Botts, W. B.....         | Houston       | Drought, H. P.....      | San Antonio   |
| Bower, E. G.....         | Dallas        |                         |               |
| Brown, T. J.....         | Sherman       | Evans, Chas. I.....     | Abilene       |
| Brown, W. M.....         | Austin        |                         |               |
| Burgess, W. H.....       | Seguin        | Farrar, L. J.....       | Groesbeek     |
| Burts, James H.....      | Austin        | Finley, N. W.....       | Tyler         |
|                          |               | Fisher, Sam R.....      | Austin        |
| Callaghan, Bryan.....    | San Antonio   | Flood, W. W.....        | Wichita Falls |
| Campbell, A. R.....      | Galveston     | Flournoy, W. M.....     | Waco          |
| Capps, William.....      | Fort Worth    | Foard, R. L.....        | Columbus      |
| Carleton, Fred.....      | Austin        | Fontaine, Sidney T..... | Galveston     |
| Carrigan, W. A.....      | Wichita Falls | Ford, T. W.....         | Jasper        |
| Carrington, W. A.....    | Houston       | Franklin, Thos. H.....  | San Antonio   |
| Carroll, J. A.....       | Denton        | Fulmore, Z. T.....      | Austin        |
| Carr, J. S.....          | San Antonio   | Fulton, Marshall.....   | Mason         |
| Carter, A. M.....        | Fort Worth    |                         |               |
| Cate, M. H.....          | Mineola       | Gaines, W. P.....       | Austin        |
| Charlton, Wm.....        | Terrell       | Gano, W. B.....         | Dallas        |
| Chesley, A.....          | Bellville     | Gardner, B. H.....      | Fairfield     |
| Clark, George.....       | Waco          | Garrett, C. C.....      | Brenham       |
|                          |               | Garrett, N. P.....      | Cameron       |

|                         |                |                          |                |
|-------------------------|----------------|--------------------------|----------------|
| Geer, M. R.....         | Marshall       | Kincaid, W. A.....       | Groesbeeck     |
| Gibbs, B.....           | Dallas         | Kirk, Lafayette .....    | Brenham        |
| Gibson, James P.....    | Rusk           | Kirven, O. C.....        | Fairfield      |
| Giles, W. M.....        | Mineola        | Kittrell, Norman G.....  | Jewett         |
| Givens, John S.....     | Corpus Christi | Kleberg, Rudolph.....    | Cuero          |
| Goldthwaite Geo.....    | Houston        |                          |                |
| Gooch, John Y.....      | Palestine      | Lane, John.....          | LaGrange       |
| Gordon, John A.....     | Decatur        | Ledbetter, W. H.....     | LaGrange       |
| Gould, R. S., sr.....   | Austin         | Lessing, W. H.....       | Waco           |
| Gould, R. S., jr.....   | Bryan          | Levi, Leo N.....         | Galveston      |
| Grace, Charles D.....   | Bonham         | Lightfoot, H. W.....     | Paris          |
| Graham, A. H.....       | Austin         | Looney, F. B.....        | Oakwoods       |
| Greene, S. P.....       | Fort Worth     | Looscan, M.....          | Houston        |
| Green, John A.....      | San Antonio    | Lumpkin, S. H.....       | Meridian       |
| Green, N. O.....        | San Antonio    |                          |                |
| Gresham, Walter.....    | Galveston      | Mantooth, Edwin J.....   | Homer          |
| Grigsby, W. H.....      | Mobeetie       | Marr, D. P.....          | Pearsall       |
| Grimes, S. F.....       | Cuero          | Martin, Thomas P.....    | Fort Worth     |
|                         |                | Masterson, B. T.....     | Galveston      |
| Haggerty, J. J.....     | Bellville      | Masterson, James.....    | Houston        |
| Haney, Jasper N.....    | Weatherford    | Mason, George.....       | Galveston      |
| Hancock, John .....     | Austin         | Matlock, A. L.....       | Montague       |
| Harcourt, John T.....   | Weatherford    | Mayfield, C. H.....      | San Antonio    |
| Hare, Silas.....        | Sherman        | Maxey, S. B.....         | Paris          |
| Harris, A. J.....       | Belton         | Maxey, T. S.....         | Austin         |
| Harwood, T. M.....      | Gonzales       | McCampbell, John S.....  | Corpus Christi |
| Harwood, T. F.....      | Gonzales       | McComb, John E.....      | Montgomery     |
| Hefly, W. T.....        | Cameron        | McCormick, George.....   | Columbus       |
| Henderson, T. S.....    | Cameron        | McDonald W. L.....       | Dallas         |
| Henry, John L.....      | Dallas         | McFarland, J. B.....     | Brenham        |
| Herring, M. D.....      | Waco           | McKinnon, A. P.....      | Hillsboro      |
| Hill, R. J.....         | Austin         | McKinnon, Neil L.....    | Schulenberg    |
| Hogsett, J. Y.....      | Fort Worth     | McLean, W. P.....        | Mount Pleasant |
| Holmes, H. M.....       | Mason          | McLeary, J. H.....       | San Antonio    |
| Houston, B. J.....      | Fort Worth     | McLemore, M. C.....      | Galveston      |
| Houston, A. W.....      | San Antonio    | McNeal, Thomas.....      | Luling         |
| Houston, Reagan.....    | San Antonio    | Mills, A. N.....         | Galveston      |
| Howard, Russell.....    | Floresville    | Miller, T. S.....        | Dallas         |
| Hume, F. Charles.....   | Galveston      | Minyard, W. M.....       | Dallas         |
| Hunter, Sam J.....      | Fort Worth     | Mitchell, J. M.....      | Houston        |
| Hurt, J. M.....         | Dallas         | Moore, John M.....       | Albany         |
| Hutchings, R. M.....    | Galveston      | Moore, W. F.....         | Austin         |
|                         |                | Morgan, Richard, jr..... | Dallas         |
| Jackson, A. M., jr..... | Austin         | Morris, F. G.....        | Austin         |
| Jennings, Hyde.....     | Fort Worth     | Mott, M. F.....          | Galveston      |
| Jerdone, W. M.....      | Galveston      | Murphy, J. B.....        | Corpus Christi |
| John, A. S.....         | Beaumont       |                          |                |
| Johnson, M. L.....      | Seguin         | Neblett, R. S.....       | Corsicana      |
| Johnson, W. M.....      | Centreville    | Newton, S. G.....        | San Antonio    |
| Jones, S. W.....        | Galveston      |                          |                |
|                         |                | O'Brien, Geo. W.....     | Beaumont       |
| Kelley, D. A.....       | Waco           | O'Neill, J. M.....       | Fort Worth     |
| Kilgore, C. B.....      | Wills Point    | Ochse, J. E.....         | San Antonio    |
| Kilgore, S. B.....      | Wills Point    |                          |                |

|                     |             |                     |             |
|---------------------|-------------|---------------------|-------------|
| Padelford, S. C.    | Cleburne    | Stayton, John W.    | Victoria    |
| Parks, M. C. H.     | Waco        | Stayton, Robert W.  | Victoria    |
| Paschal, George     | San Antonio | Stephens, John H.   | Montague    |
| Pearson, P. E.      | Richmond    | Stewart, Joe H.     | Austin      |
| Perkins, E. B.      | Greenville  | Storey, L. J.       | Lockhart    |
| Phelps, R. H.       | LaGrange    | Stout, J. F.        | Corsicana   |
| Plowman, Geo. H.    | Dallas      | Street, Robert G.   | Galveston   |
| Ponton, T. J.       | Gonzales    | Stubbs, James B.    | Galveston   |
| Pope, A.            | Marshall    | Styles, Cary W.     | Glen Rose   |
| Pope, W. H.         | Marshall    | Swain, W. J.        | Austin      |
| Porter, R. C.       | Dallas      | Swan, A. K.         | Henrietta   |
| Porter, C. L.       | Gainesville | Swearingen, J. T.   | Brenham     |
| Prather, William L. | Waco        | Taliaferro, S.      | Kerrville   |
| Prendergast, F. H.  | Marshall    | Tarleton, B. D.     | Hillsboro   |
| Proctor, D. C.      | Cuero       | Templeton, John D.  | Fort Worth  |
| Quinan, George      | Wharton     | Terhune, E. W.      | Greenville  |
| Rainey, Anson       | Waxahachie  | Terrell, A. W.      | Austin      |
| Randle, E. B.       | Brenham     | Terrell, J. O.      | Terrell     |
| Read, F. N.         | Corsicana   | Terry, J. W.        | Galveston   |
| Reaves, S. D.       | Tyler       | Thomson, T. A.      | Austin      |
| Rector, John B.     | Austin      | Thompson, Wells     | Columbus    |
| Rector, N. A.       | Giddings    | Todd, George T.     | Jefferson   |
| Roach, I. N.        | Weatherford | Tucker, Chas. Fred  | Dallas      |
| Roberts, O. M.      | Austin      | Tucker, Phillip C.  | Galveston   |
| Robertson, John W.  | Austin      | Upton, C.           | San Antonio |
| Robertson, H. G.    | Dallas      | Vernor, Henry E.    | San Antonio |
| Robertson, Sawnie   | Dallas      | Walker, A. S.       | Austin      |
| Robinson, C. S.     | San Antonio | Walker, John C.     | Galveston   |
| Robson, W. S.       | LaGrange    | Walker, Richard S.  | Nacogdoches |
| Rogers, R. A.       | Fort Worth  | Walker, R. C.       | Austin      |
| Rugeley, R. D.      | Montague    | Walling, W. W.      | San Antonio |
| Russell, D. L.      | Belton      | Walthall, L. N.     | San Antonio |
| Russell, L. B.      | Comanche    | Walton, W. M.       | Austin      |
| Russell, T. J.      | Beaumont    | Ward, P. H.         | San Antonio |
| Sayers, J. D.       | Bastrop     | Watts, A. T.        | Dallas      |
| Sayles, Henry       | Abilene     | Waul, T. N.         | Galveston   |
| Scott, B. R. A.     | Galveston   | West, Robt. G.      | Austin      |
| Scott, J. Z. H.     | Galveston   | West, Robt. H.      | Dallas      |
| Scott, J. C.        | Fort Worth  | White, Alex.        | Dallas      |
| Searcy, W. W.       | Brenham     | White, John P.      | Austin      |
| Sebastian W. P.     | Cisco       | Whitehead, J. P. C. | Dallas      |
| Sexton, Frank B.    | Marshall    | Whitman, M. J.      | Rusk        |
| Shaw, Gus.          | Clarksville | Williams, Eugene    | Waco        |
| Shaw, W. N.         | Houston     | Williams, W. D.     | Austin      |
| Shelley, N. G.      | Austin      | Willie, A. H.       | Galveston   |
| Shepard, Seth       | Dallas      | Willson, Sam A.     | Austin      |
| Shropshire, E. L.   | Comanche    | Winter, John G.     | Waco        |
| Simkins, W. S.      | Dallas      | Woods, John S.      | Kaufman     |
| Simpson, Isaac P.   | San Antonio | Woodward, W. H.     | Indianola   |
| Simpson, Friench    | Columbus    | Wooten, Dudley G.   | Austin      |
| Simpson, J. B.      | Dallas      | Wright, H. B.       | Clarksville |
| Sinks, Ed. R.       | Giddings    | Wright, W. B.       | Dallas      |
| Spence, W.          | Dallas      | Wynne, R. M.        | Fort Worth  |

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### DECEASED MEMBERS.

ADAMS, Z. T., Kaufman. Died January 9, 1886.  
ANDREWS, A. W., Terrell. Died February 15, 1887.  
BONNER, M. H., Tyler. Died November 25, 1883.  
BALLINGER, W. P. Died January 20, 1888.  
BRADLEY, L. D., Fairfield. Died October 6, 1886.  
BRADSHAW, C. J. Died June 13, 1888.  
FRISBIE, W. H., Groesbeeck. Died September 12, 1887.  
GOSLING, H. L., Castroville. Died February 21, 1885.  
HILL, GEORGE L., Gainesville. Died July 25, 1887.  
JONES, C. ANSON, Houston. Died January 19, 1888.  
KENNARD, JOHN R., Anderson. Died —, 1887.  
LANGUILLE, P. T., Galveston. Died October 14, 1882.  
LOGUE, L. J., Columbus. Died May 15, 1884.  
MCCOY, JOHN C., Dallas. Died April 30, 1887.  
MOORE, GEORGE F., Austin. Died August 30, 1883.  
MASON, J. R., San Antonio. Died July 29, 1888.  
PECK, L. L., Fairfield. Died May 30, 1885.  
PEELER, A. J., Austin. Died November 3, 1886.  
PRENDERGAST, H. D., Austin. Died November 5, 1886.  
READ, N. C., Corsicana. Died October 25, 1884.  
RUCKER, W. T., Belton. Died August 10, 1885.  
TIMMONS, B., LaGrange. Died June 17, 1884.  
WAELDER, JACOB, San Antonio. Died August 23, 1887.  
WALLACE, W. R., Castroville. Died November —, 1884.  
WEST, C. S., Austin. Died October 23, 1885.  
WILKES, F. D., Lampasas. Died November 21, 1886.

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# ANNUAL \* ADDRESS

DELIVERED BEFORE THE

## TEXAS ‡ BAR ‡ ASSOCIATION,

BY

F. CHAS. HUME,

OF THE GALVESTON BAR.

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EXECUTIVE PROCESS—SHOULD THE LEGISLATURE EXTEND IT.

*Mr. President and Gentlemen of the Association :*

Texas being a common law State, the rules of that system with respect to process and remedies are controlling, save where modified by statute or decisions of the Supreme Court.

In the enumeration of property and interests not liable to *fiery facias* at common law, were included incorporeal hereditaments, choses in action and equitable interests.

Under one of our forms of executive process—the writ of garnishment—the indebtedness of a third person to the debtor may be made available for the satisfaction of the obligation of the latter to his creditor; and if the garnishee be an incorporated or joint stock company in which the debtor owns stock, such stock may also be reached and applied to his debt. (R. S., Arts. 199, 208-10.)

This changes in some measure the force of the ancient rule with respect to choses in action, but it is not every indebtedness evidenced by a chose in action that is exposed by the statute to the creditor using that writ. For example: A, may be the judgment debtor of B, in one Court, and yet his obligation as such cannot be enforced in favor of C, the creditor of B, by garnishment from another Court. (3 App. C. C., § 203.) Nor can the notes or accounts due the debtor by another and in the



hands of a third person for collection, be subjected to this process issued against such third person; because the rule in construing attachment and garnishment statutes is, that writs issued under them can affect only such property as may be siezed and sold under *feri facias*, unless the statutes otherwise provide. (Price v. Brady, 21 Tex., 616-7; Taylor v. Gillean, 23 Tex., 515; Ellison v. Tuttle, 26 Tex., 285.)—The remedy is a legal one, and is concerned about only such rights, credits and effects as are of a legal nature and not encumbered with trusts. (G. H. & S. A. R'y Co. v. McDonald, 53 Tex., 516; same v. Butler, 56 Tex., 509; same v. Hume, 59 Tex., 47-8.)

The writ of attachment requires no separate consideration, since it can be levied only upon the property liable to execution and in the manner prescribed for that writ. (R. S., Arts. 166-7.)

The writ of execution, or *feri facias* proper, directs the officer to satisfy the judgment out of the property of the debtor subject to execution. (R. S., Art. 2281.) This limitation of the scope of the writ, without more, would confine it to that description of property subject to *feri facias* at common law. It is leviable:

1. On personal or movable property.
2. On uncultivated lands.
3. On cultivated lands. (R. S., Art. 2288.)

It has been seen that in Price v. Brady, *supra*, and other cases, a statute of substantially similar provisions was construed as not embracing choses in action in the terms personal or movable property, and that they were not liable to execution, following the common law doctrine. Although the Court referred to the statutory rule prevailing in some of the States, making notes and bonds subject, under process of garnishment, to be surrendered by the garnishee, as in North Carolina; and to the writ of execution, as in Louisiana, where the mandate directs the sale of the rights and credits, as well as the real and personal property, of the debtor, the Legislature has not enlarged the scope of the process; except in so far as such enlargement may be effected, or the efficacy of the process enhanced by the special provisions making corporate stock liable to levy and sale, and prescribing a mode of levy upon and sale of the interest of a partner in partnership property, of goods and chattels pledged and mortgaged, of live stock running at large, of personal property in which the defendant has an interest without having the right of possession, and of all property sold, mortgaged, or conveyed in trust by the debtor. (R. S., Arts. 2289-2297, 2313-4.)

The equity of redemption in both personal and real property has long been adjudged liable to execution. (Wight v. Hender-

son, 12 Tex., 45; Wooten v. Wheeler, 22 Tex., 340; Ballard v. Anderson, 18 Tex., 386; Baker v. Clepper, 26 Tex., 634; Smothers v. Field, Thayer & Co., 65 Tex., 438.) So, one who has paid part of the purchase money for land and holds the vendor's bond to make title thereto upon payment of the whole, owns such an interest in the land as may be sold under the writ, Mooring v. Lyon & McBride, 62 Tex., 312; and this residuary interest of an assignor in the property assigned is accessible to execution, or bill in equity, according to its nature. (Howerton v. Holt, 28 Tex., 60.) The interests just mentioned are clearly of an equitable nature and have been subjected to executive process by force of judicial construction and policy, and independent of legislation. There may be other forms of interest in property thus made liable to execution by the courts, but, after all, it remains that the common law restrictions upon the application of the writ are, in the main, still operative.

One striking and exceptional enlargement of the writ—applying, however, to only one class of debtors—is that which exposes to it not only the real and personal property of railroad corporations, but also their road beds, tracks, franchises and chartered rights, and entitles the purchaser and his associates to exercise all the powers, privileges and franchises granted by law to such corporations as if they were the original corporators, and to construct, complete, equip and work the roads upon the same terms and conditions as are imposed by the charters of incorporation and the general laws. (R. S., Articles 4259–66.) Nothing could be more radical than this innovation, since it subjects to sale, either by a trustee under a power or by a sheriff under a *fiери facias*, a species of incorporeal hereditaments, namely, franchises, chartered rights and privileges, which were aforesaid incapable of either voluntary or forced alienation. It is obviously illogical to extend the writ to the property, rights and franchises of railroad corporations only; for they are of all private or business corporations the nearest in approach to public institutions. So true is this that they are often denominated *quasi* public, and sometimes public, corporations, and there is no class of money-making associations, deriving their existence from the State, in which the public interests are so thoroughly interwoven. It is an anomaly in State legislation and policy that their chartered rights and franchises should be exposed to sale for the satisfaction of their debts while the rights and franchises of other corporations, such as banks, turnpikes, canals, street railways, gas companies, etc., are exempt from like liability. The law, as far as it goes, is wise and just, since the reasons that once im-

posed the exemption now removed by the law, have long ceased to exist. The earlier rule and policy were, for the most part, based on the theory that in granting charters the sovereign communicated something of his prerogative to the grantees, selecting them of all others to execute his will and policy, having in view their station, wealth, capacity and general fitness for the work contemplated by the grant. Compared to its extent in modern times, the theatre of corporate action was limited, and there were fewer competent men and far less wealth at hand to organize and direct it. In our day, when the associative principle and organization take hold of so many forms of business enterprises, and there are so many men fitted by education, training and wealth to exercise corporate franchises, it seems absurd to fetter the alienation of such franchises so as to practically exempt their grantees from liability for their debts. Such considerations doubtless inspired, in part at least, the abrogation by the legislature of the old protective rule with respect to chartered rights and franchises of railroad corporations; but why the change should be limited to those it is difficult to understand.

The extent of the power of our courts to aid the creditor by the exercise of equity jurisdiction, where legal remedies for the collection for his debt fail, is, it would seem, very imperfectly defined.

In *Price v. Brady*, *supra*, the question is raised, but not decided, whether the equity powers of the court are adequate to reach personal property, as choses in action, not liable to law process. The court seems to incline to this view, that if such powers are adequate they can be invoked only in cases of fraud and trust. There is discussion of the same point in the subsequent case of *Taylor & Gilleen* 23 Tex., 516, but no conclusion reached; although the tendency of the argument is to affirm the existence of the doubted powers as to choses in action fraudulently assigned by the debtor while the creditor is pursuing his demand. In *Arthur v. Batte*, 42 Tex, 161, the court refers to the case just cited for the proposition, that in a proper case a judgment creditor may claim the assistance of the equitable power of the court; but proceeds to deny an injunction to a judgment creditor in a Federal court seeking to delay execution in a State court in favor of his debtor against the latter's judgment debtor until the Federal court shall pass upon the answer of the debtor last named to the plaintiff's writ of garnishment sued out of the Federal court. The court cites *Price v. Brady* approvingly and denies that the garnishment entitled the plaintiff to an injunction.

In *Gamble v. Dabney*, 20 Texas, 76, while denying the liabil-

ity to execution of the interests of a wife in slaves conveyed to trustees, in trust, out of the rents, issues, and profits, to provide for and maintain her and her children, free from her husband's control, during her life, and after her death to and for the sole use of the children, the court intimated that equity might relieve the execution creditor by subjecting the surplus proceeds of the trust, if any, to the satisfaction of his debt.

By a divided court it was ruled in *Ward v. McKenzie*, 33 Tex., 297, that in one and the same action the plaintiff could attach the land of the defendant debtor and sue his grantee and the latter's trustee to set aside a fraudulent conveyance of the land, and in one decree recover his debt against the one party and set aside the conveyance as to the others, and have an order for the sale of the land to satisfy the debt,—although the plaintiff was not a judgment creditor when his suit was instituted and the attachment was quashed in the course of the proceedings. The decision proceeds upon the assumption that in our State a creditor need not obtain judgment as a condition precedent to the accrual of the right to the assistance of equity to set aside a fraudulent conveyance. It appeared that all the parties were non-residents. The court satisfied itself with the conclusion that the *levy* of the attachment operated a lien upon the land, holding it until rendition of decree and issuance of execution; and, that since the forum dispensed both law and equity in the same suit, every obstacle to the satisfaction of the demand out of the land could be removed by the decree.

In *Galveston, Harrisburg & San Antonio Railway Company v. McDonald*, 53 Tex. 510, followed and approved in 56 Tex., 506, and 59 Tex., 47, the doctrine of equitable assistance to a judgment creditor is considered in a case held to demand its affirmative application. There the plaintiff alleged that she had obtained judgment against the trustees of the creditors and stockholders of the sold out Buffalo Bayou, Brazos & Colorado Railway Company, in their capacity as such, upon an indebtedness accruing to her interstate prior to the sale of the property and franchises of said company; that execution duly issued was returned *nulla bona*, and that there is no property subject to levy and sale under execution to satisfy her judgment; that the defendant, the G. H. & S. A. R'y Co. holds the legal title to lands in Harris county wherein said trustees, in their capacity as such, have an interest of one-half; and that the company is indebted to said trustees in their trust capacity, under an agreement made part of the petition; that her judgment is a lien on the land, etc. Prayer that the indebtedness of the G. H. & S. A. R'y Co. and

the land be subjected to the payment of her judgment, and that the land be sold to that end. The trustees of the sold out company were joined as defendants. The defendants answered separately, by general demurrer and general denial, making the simple contention that plaintiff had no cause of action. It appeared that there was due by the G. H. & S. A. R'y Co. to the trustees of the creditors and stockholders of the sold out company, under the agreement alleged in the petition, an amount equal to the plaintiff's judgment, and for that amount a judgment was rendered for plaintiff against the G. H. & S. A. R'y Co., and the defendant trustees in their capacity as such, and lien established on one-half the property named in the petition, for said amount, the execution ordered against the G. H. & S. A. R'y Co. for any unpaid balance. The company appealed, contending:

1. That plaintiff's judgment against the trustees and stockholders of the sold out company did not operate a lien against the land, the trustees having no interest in the land, that interest being in the *cestui que trust*; and that plaintiff, as a mere general creditor, could acquire no lien or preference adverse to other such creditors, against the trust estate by suing and obtaining judgment against the trustees as such.

2. The plaintiff could neither have a personal judgment against appellant, nor subject its indebtedness to the trustees to the satisfaction of her debt, because appellant was under no obligation to her, and there was no privity between them; and moreover, appellant's obligation was to the trustees for the benefit of all the creditors, and plaintiff, as one of these, could not by suit and judgment appropriate to herself the assets liable to all, and thus consume the trust estate. The judgment below was affirmed. The court passed the question of liability to the plaintiff's lien of land held in trust for the benefit of creditors and stockholders generally of the sold out company; because the trustees were not parties to the appeal, and it did not appear that there were any creditors of the sold out company to be affected by plaintiff's judgment. The decision was, in effect:

*First.* That plaintiff's suit was, substantially, an appeal to the equity power of the court to aid her to subject the assets of the sold out company, represented by the trustees, in the hands of the defendant company, to the satisfaction of her original judgment; and that while there was no direct privity of contract between her and the company entitling her to recover against it alone in a court of strictly common law jurisdiction, yet in the form of proceeding adopted she could recover in our courts—especially since the trustees were joined and the decree rendered

protected the company by making the amount a credit on its said indebtedness.

*Second.* That plaintiff could rightfully join the defendant company and the trustees in a proceeding to subject the land to the payment of her judgment, the defendant company being in possession of the land and having legal title thereto, and the indebtedness and property both being of a trust character.

*Third.* That, besides, equity could relieve upon its jurisdiction to remove impediments to the sale of property at a fair price, since, the legal title to the lands being in the defendant company, and the equitable title to the half in the trustees having been so encumbered with trusts for creditors generally and stockholders, a sale for the benefit of the plaintiff only would not realize the full value of the lands unless made under order of court.

The opinion cites with approbation *Good v. Sherman*, 37 Texas, 660, where it was held that an execution levied on real estate of a sold out railway company held by statutory trustees would not be enjoined at the suit of the trustees, who admitted the defendant's judgment against the company, and failed to show that there was any other creditor of the company, or to account for their delay in applying the trust property to defendant's demand.

It will be observed that the trust estate permitted to be reached in these two cases—in the last by execution direct and in the first by a proceeding characterized as a bill in equity—was vested in the statutory trustees of the property of a sold out railroad corporation.

The present state of decision does not warrant the assumption that the same conclusions would follow a consideration by our Supreme Court of the question of the liability to such process or proceeding of any other description of trust property held by any other character of trustees.

In the first case, it is true, the court, in support of its views, refers more than once to the general doctrine obtaining in this country with respect to the power of equity to aid judgment creditors to realize their demands (*Freeman on Ex.*, §§ 424-5); but we cannot say that these references were designed to imply a wider application of that doctrine here than the case in hand required.

And after all, assuming that the doctrine referred to is adopted by the court, we are yet in a state of confusion, mystification and doubt as to its limitations.

Mr. Freeman—*Executions*, § 424—enumerates objects attainable by proceedings in equity in aid of a judgment at law, substantially thus :

1. Discovery of defendant's assets and their subjection to plaintiff's demand.
2. Sale of equitable and various other assets not subject to levy and sale at law.
3. Removal and prevention of obstructions to law process, such as fraudulent encumbrances and transfers of property, and the aid of a receiver when necessary.

But in the next following section, § 425, we are left at sea in applying the propositions stated.

The author says that the creditor's bill will doubtless reach everything that can be levied on and sold at law; but that the difficulty is in determining what property not subject to law process is liable in equity. After reciting certain estates accessible to equity, he remarks: "It still remains doubtful, where there has been no legislation upon the subject, whether in the absence of fraud, or any other well-known ground for supporting the exercise of its jurisdiction, equity will assist a creditor to reach those assets of his debtor, which under no circumstances could have been subject to execution at law. This question has been most debated with reference to stocks and other choses in action. Notwithstanding a contrary opinion expressed by some very eminent American jurists, we judge that the weight of the authorities is in support of the view that equity has no power in ordinary cases, to compel the appropriation of choses in action to the payment of their owner's debts. \* \* \* What stocks, choses in action, franchises and other property which was not subject to execution at common law, can now, in the absence of any statute on the subject, be reached by a creditor's bill must still be regarded as unsettled."

It must be evident, from what has been said, that in this State many substantial rights and interests of a debtor are protected from appropriation to his debts under executive process; that we are without the means of judging to what extent our Supreme Court would go in aiding the creditor in equity; and, that if the broadest equity jurisdiction were enforced, it would be inadequate to reach many forms of property, which, in good conscience, ought, in some manner, to be made to contribute to the discharge of the owner's debts.

Would it not, then, be a just and wise exercise of the legislative power to enlarge the scope and efficiency of executive process in our State, as has been done in many other States, and thereby force able but unwilling debtors to respect their obligations?

The question of the precise extent of such enlargement I do

not attempt to resolve—that is deserving of the patient thought and care of many minds; but an outline may be suggested by observation of what has been accomplished in other quarters. Such observation, however, cannot claim to be exhaustive, or to be directed to original sources in every instance; but enough may be gathered from standard authorities and accompanying annexations and references to mark, in the main, the course of amendatory legislation.

In *Price v. Brady*, *supra*, the court refers to an English statute, passed early in the reign of the present sovereign, as authorizing the seizure of bills of exchange, promissory notes, etc., to be held as securities for the execution—the manner of procedure being for the sheriff to collect the bills or notes, by suit and public sale, if necessary, and apply the amount realized to the satisfaction of the debt. (1 and 2 Vict. C, 112, S. 12.) The text of Broom & Hadley's Commentaries on the Laws of England, Vol. 2, top page 270, published in this country in 1875, refers to the same statute as subjecting to *fieri facias* not only what are ordinarily termed goods and chattels, "but leases and terms of years, money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money belonging to the person against whose effects it has been sued out;" and on the following pages describes the executive writ of *elegit* as commanding the sheriff "that he cause to be delivered to the judgment creditor by a reasonable price and extent the goods and chattels of the judgment debtor (except his oxen and beasts of the plough), and also such lands, tenements, rectories, tithes; rents, and hereditaments, including lands or hereditaments of copy-hold or customary tenure, as the said judgment debtor or any person in trust for him was seized or possessed of on the day on which the judgment was entered up, or at any time afterwards, or over which he on that day had any disposing power which he might (without the assent of any other person) exercise for his own benefit to hold the said goods and chattels, also to hold the said lands, tenements, rents, tithes, rectories and hereditaments, respectively, according to the nature and tenure thereof, to him and to his assigns, until the amount due under the execution be levied. The sheriff's duty under this writ is to impanel a jury to inquire of the goods and chattels of the debtor, and to appraise them, and also to inquire as to his lands and their value, and the goods (if any) are to be delivered to the execution creditor; and if the value of the goods is insufficient to satisfy the execution, the legal possession or right of entry to the lands is delivered to the execution creditor. (2 Broom & Hadley's Com., 271-2; 1 Id. 623.)



Under the law of Louisiana, commented on in *Price v Brady*, as subjecting the debtor's rights and credits, as well as other property, to *feri facias*, it seems that the sheriff need not seize and sell a note due the debtor, but that he may make a valid sale of the debtor's right, whereof the note itself is merely evidence, without acquiring possession of the note; and that such sale vests in the purchaser every existing accessory—such as mortgage or other lien—to the debtor's right. (*Wilson v. Munday*, 5 La. Rep., 486-7.) Subsequent cases, however, do not construe the statute as authorizing the sale of a note or other tangible property, unless actual possession thereof has been first taken, and is held, at the time of the sale, by the officer. (6 Rob., 345.; 7 Rob., 500; 2 La. Ann., 338, 785, 910; 3 La. Ann., 390.)

So it is ruled in that State that a judgment may be seized and sold under *feri facias*, although at the time of the levy it had not been signed by the judge, and after it was so signed, it had been removed to the Supreme Court by suspensive appeal, and notwithstanding a garnishment statute existed prescribing a mode of reaching interests of that nature. The return on the writ showed a levy on the judgment by description, giving its number, amount, names of parties and court where rendered, and the sheriff notified the judgment debtor of the seizure. (*Safford v. Maxwell, Sheriff et als.*, 23 La. Ann., 346-7, citing *Hanna v. Bry*, 5 La. Ann., 656 and *Richter v. Slidell*, 9, Ann. 605.) The court goes so far as to say, in effect, that, conceding there was no judgment proper at the time of the levy, the suit itself (that is, the intangible cause of action) could be seized and sold, since, like a judgment, it was an incorporated right transferable as well by forced as conventional sale. (347.)

In Maryland a statute of 1810 made it "lawful for any sheriff or other officer to whom any writ of *fi fa* shall be directed, to take, seize and expose to sale any equitable interest or interests which the defendant named in such writ may have or hold in any lands, tenements or hereditaments." (*McMechlen & Marman*, 8 Gill & J., 67.) Sec. 3046 of the Iowa Code subjects choses in action to levy and sale. It expressly names, among other things, judgments as being so liable, thus escaping a decision of the Supreme Court of that State which construed a prior statute as not embracing judgments in the terms "bank bills and other things in action," and "bank bills, drafts, promissory notes and other papers of a like character"—the court holding that the property contemplated by the statute was such as could be seized and taken into possession by the officer, and, besides, that the garnishment statute was designed to reach such assets as judg-

ment debts due the defendant in execution. It seems that there the officer may collect "things in action" by suit in his own name and apply the proceeds to the execution. (Freeman on Ex., § 112, n. 1; *Osborn v. Cloud*, 23 Iowa, 108-9.)

The California statute seems intended to reach every ascertainable right or interest of the judgment debtor. It provides that "all goods, chattels, moneys, and other property, both real and personal, or any interest therein of the judgment debtor, not exempt by law, and all property and rights of property, seized and held under attachment in the action, are liable to execution. Shares and interests in any corporation or company, and debts and credits and all other property, both real and personal, or any interest in either real or personal property, and all other property not capable of manual delivery, may be attached on execution in like manner as upon writs of attachment." (Freeman on Ex., § 112, n. 1.)

The sheriff executes the writs by "collecting the things in action," and his delivery to the purchaser of personal property not capable of manual delivery of a certificate of sale and payment conveys to the purchaser all right, title and interest in the property owned by the debtor on the day of levy. A sale under the statute of a promisory note actually seized and taken into possession by the officer, was said by the Supreme Court, in *Davis v. Mitchell*, 34 Cal., 88, to vest title in the purchaser; but it was left undecided whether a valid sale could be made of a note not actually held and seized by the officer. Decisions referred to in the opinion seem to indicate that, if not really holding the note, or such like chose in action, the officer could make no valid sale, without such specific description of it and explanation of the facts determining its value as would afford reasonably fair information of such value to the bidder. (*Crandel v. Blen*, 13 California, 15.)

In Wisconsin the statute provides specifically for the attachment of debts or other property incapable of manual delivery to the sheriff, and for the collection by that officer of notes, accounts, and other evidences of debt so attached, or that may have been delivered to him by any person summoned as garnishee. (*Brown, Sheriff, &c. v. Smith et al.*, 17 Wis. 422.)

In Connecticut, equitable interests in choses in action, as in other forms of property, real and personal, are made liable by statute to attachment and execution; and it was held there that the interest of a debtor in shares of stock pledged by him as collateral security for a debt due by him to a third person was so liable, although the pledgee had procured a certificate of owner-

ship of the stock in his own name. (*Savings Bank v. Jarvis*, 33 Conn., 372.)

A statute of Kentucky, passed in 1796, subjected trust estates of every kind to the debts of the beneficiary to the same extent as if the beneficiary owned the like interest in the thing holden in trust as he owned in the use or trust thereof; and it was held under this statute that the interest of the beneficiary in a slave conveyed in trust, to apply the proceeds of his hire to the maintenance of the beneficiary during the latter's life, was subject to execution. (*Eastland v. Jordon*, 3 Bibb, 186.) That Statute yet remains in force. (*Marshall's Trustee v. Rash et al.*, 7 S. W. Reporter, 880.)

In the same State, while equitable interests in choses in action are not liable to execution under the act cited, yet they are subjected by a later statute to the debts of the *castui que trust* by proceedings in chancery. (*Cosby v. Ferguson*, 3 J. J. Marsh, 264; *Pope v. Elliott*, 8 B. Mon., 61-2; *Johnson v. Ellis*, 12 B. Mon., 480-1; *Samuel v. Salter*, 3 Met., 259.)

The code of New York is ruled by the Court of Appeals to expose to execution contingent future interests in land. (*Sheridan v. House*, 43 N. Y. Rep., 569.)

In Pennsylvania, by statute, the franchises and property of any kind of a debtor corporation may be sold under execution, Phil. & Balto. Cent. R'y Co's. Appeal, 70 Penn. St., 356, and Mr. Freeman states that similar statutes exist elsewhere. (*Freeman Ex.*, § 179.)

In Arkansas, the statute, in general terms, subjects all equitable estates to execution; but in view of the circumstances attending its enactment, and of its peculiar phraseology, the statute was held not to embrace a debtor's equitable estate in land, in which there were conflicting interests upon the determination of which the debtor's real interest depended, and in such case the Court required the creditor to proceed in equity, making every one interested a party. (*Pettit v. Johnson*, 15 Ark., 62.)

It seems that pure equities are made liable to execution by the Alabama statute. (*Freeman Ex.*, § 188, note 4, citing Sec. 2871, Code Ala.)

The same doctrine obtains in Mississippi under a statute subjecting trust estates to execution, the statute being confined by the Courts to estates in which the trustee holds nothing but the naked legal title, and equity alone affording a remedy in all other cases. (*Presly v. Rodgers*, 24 Miss., 525.)

To like effect is the rule in Missouri. (*McIlhaine v. Smith*, 42 Mo., 55.)

Under a variety of statutes, more or less restricted in terms or by construction, equitable estate in land, including resulting trusts, equities of redemption, the interest of the grantor conveying by an instrument intended as a mortgage and the interest of the vendee under a contract to purchase, are, in many States, subjected to execution. (Freeman Ex., §§ 188-194.)

In some of the States, the creditor's remedies for collecting debts are enlarged, by statutes or decisions, extending the jurisdiction of equity.

The Revised Statutes of New York give chancery jurisdiction to satisfy debts at law out of debts due the defendant, or things in action, or property held in trust for him, after the remedy by execution has been exhausted. (II. 173, Sec. 38.)

In the twelfth edition of Kent's Commentaries, the States of New Hampshire, New York, Ohio, Kentucky, Michigan, Georgia, Pennsylvania, Tennessee, Mississippi, Connecticut and Maryland are enumerated as having enlarged the creditor's remedies, by statute or judicial construction, so as to reach, with more or less effectiveness, things in action and equitable interests. (2 Kent Com., 443, note e.)

Since our Courts exercise both law and equity jurisdiction, it would not seem needful that amendatory legislation should concern itself with referring its enforcement to the one jurisdiction or the other, as the law once declared must be administered by the same tribunal, whether the remedies provided be such as would fall under the one or the other technical designation of judicial power.

Pertinent here is the question of Mr. Freeman, upon affirming the jurisdiction of equity to compel equitable interests to contribute to the satisfaction of a judgment against the owner:

"If such interests are to be subjected to forced sale, it is better to allow them to be taken under *fiери facias* than to compel the creditor to resort to a separate suit; for the suit, after subjecting both parties to delay and expense, without any compensatory advantages, does precisely what might long before have been done under a *fiери facias*." (Freeman Ex. § 116.)

The remedies provided should be such as would compel, when necessary, a discovery by the debtor, or any one else acquainted with the facts, of the precise nature, locality and condition of all property made subject to his debts, so that such property, whether tangible or intangible, may be exposed, according to its real character, and with some approximation to its actual value, to execute process; and refusal to make such discovery should be visited by adequate penalties.

For example: A chose in action evidenced by a promissory note, or other tangible thing, might, by the secretion or loss of of the physical evidence of its existence, be of an amount, value and nature so uncertain as to render its sale of little value to the creditor, uniformed as to all these particulars, so essential to be known to bidders at the sale.

In such case the law should provide means to compel its delivery to the officer charged with the execution of the process, and, failing that, a correct description of it should be required.

So, an equitable interest, wholly intangible, as a parol trust estate, should, in like manner, be uncovered.

What has been said is intended as a mere outline of a subject whose ample treatment cannot be compassed in a paper appropriate to an occasion like this; and, besides, its inherent difficulties discourage the tone and manner of extended and confident statement.

The theme is tedious and prosaic to a degree that almost refuses the grace and ornament of discussion, and yet is second to none in practical interest and importance.

It has seemed to me to possess that substantial value which justifies me in commending it to your serious reflection.

Doubtless the modern policy of preserving to the citizen certain assurances of comfort and security which no misfortune can destroy, is both humane and wise; but beyond the pale of this express protection no one should have the aid of the law to facilitate his escape from the obligations resting upon him as a constituent of the social state.

F. CHAS. HUME,  
Of the Galveston Bar.

R E P O R T  
OF THE  
COMMITTEE ON COMMERCIAL LAW,  
JULY 5, 1888.

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*To the Hon. M. D. Herring, Vice-President of the Texas Bar Association :*

Your Committee on Commercial Law submit, for the consideration of this Association, the following report :

I.—MARRIED WOMEN.

We suggest that the law governing the property rights of married women should be amended so as to embrace the following :

1. Any married woman may carry on any trade or business and perform any labor or service on her sole and separate account under proper regulations and restrictions ; and the earnings of any married woman from her trade, business, labor or services shall be her separate property.

2. That she may carry on such trade or business, etc., either as an individual or partner.

3. That she may bargain, sell, and convey her separate, real and personal property, without a separate acknowledgement and without being joined with her husband, and that she may enter into any contract with reference to her separate business or property in the same manner, to the same extent and with like effect as a femme sole.

4. That she may sue and be sued in the same manner as a femme sole.

5. That she be not permitted to become the surety of her husband for an indebtedness created by him, or to mortgage or pledge her separate property for such indebtedness.

6. That the statute of limitations be changed so as to conform to the above.

## II.—ATTACHMENT LAW.

1. That our attachment law, in so far as same effects non-resident debtors and their property situated in this State, be so amended as to conform to the decision of the Supreme Court of the United States in the case of *Cooper v. Reynolds*, 10 Wall., 308.

2. That article 170, R. C. S., be so amended as to limit the time to ten days within which the defendant may be permitted to replevy the property attached, and should the defendant not replevy during this time, then that thereafter this right to replevy be given to the plaintiff.

3. That article 182, R. C. S., be so amended as to conform to the suggestions made by the Supreme Court of this State in the case of *Blum v. Addington*, rendered at the Austin term, 1888; that is, when an attachment has been quashed, the judgment of the court should not order an immediate delivery of the property attached, or the proceeds thereof, to the defendant when the plaintiff has excepted to and appealed from such action of the court, but such order of delivery should be held in abeyance to await the action of the Appellate Court.

4. That a subsequent attaching creditor, under proper restrictions and regulations, should at any time after the levy of his attachment, and without leave of the court, be permitted to intervene in a prior attachment whenever such prior attachment is fraudulent, or was issued and levied by and with the consent of the defendant debtor, or when the grounds for suing out such attachment are untrue; and upon the establishment of either of these facts, then such prior attachment should be adjudged to be void in so far as same affects the rights of the intervening attaching creditor.

5. That the right to continue a case be granted to an intervenor upon the same conditions and to the same extent, as such right is granted to the plaintiff or defendant.

## III.—ASSIGNMENT LAW.

We suggest the following amendments and changes in the assignment laws of this State:

1. That no debtor be permitted to make an assignment whose available assets do not exceed in value one thousand dollars.

2. That no assignor be discharged in full from any of his liabilities whose indebtedness does not exceed twenty-five hundred dollars.

3. That no assignor be discharged from his liability to a creditor who does not receive as much as one-half of the amount due and allowed in his favor as a valid claim against the estate of such assignor.

4. That a creditor of an assigned debtor who has a mortgage or other lien on any of the assets of said estate, shall, in case the property subject to such mortgage or lien exceed in value the claim so secured, be required to prove his said claim and present same to the assignee, as is required by other consenting creditors, in which case the assignee shall pay off such claim in full; but should such lien creditor, after being duly notified, fail so to prove and present his claim, then such property shall be released from such mortgage or lien.

5. That Section 11 of the Assignment Act of 1879 be made a separate and distinct enactment under a proper heading, so that there may be no question in regard to its constitutionality; that is, that said section be disconnected from the civil and made a part of the criminal code of this State.

6. That assignees be required to close the estates and make final distribution thereof within twelve months from the date of the assignment, unless the time be extended by the Court having jurisdiction of the assignment, upon written application of an interested party, showing good cause for such extension.

7. That the assignment law in general needs remodeling and perfecting.

#### IV.—FRAUD.

1. That an efficient law be passed authorizing proper proceedings for the discovery of money choses in action, securities, and other rights owned by debtors, and which are in the possession or under the control of such debtors, their agents or attorneys, and to confer upon the proper Court, when such discovery has been made, the power to get control and possession of said money choses in action, etc., and to apply the same, or the proceeds thereof, to the payment of the indebtedness of such debtors.

2. That it be made a penal offense for an insolvent debtor to convert his property or effects into money for the purpose of placing it beyond the reach of his creditors, or to dispose of same in any way for the purpose of defrauding his creditors.

#### V.—GARNISHMENT.

That Art. 191, R. C. S., be amended so as to require the garnishee to hold in his possession only so much property, money, etc., as may be sufficient to satisfy plaintiff's demand, or



if a corporation, to refuse to transfer on its books only a sufficient amount of stock which when sold will satisfy plaintiff's demand.

VI.—EXECUTIONS.

1. That constables be not permitted to execute writs of attachment and executions issued from the District Courts, unless such constable has executed a good and sufficient bond equal in amount to the bond of the sheriff of the county to which such writs have issued.

2. That several executions may issue to different counties in the first instance when it is made to appear by the affidavit of the plaintiff, his agent or attorney, that the defendant has not sufficient property subject to execution in the county where the judgment was rendered to satisfy such judgment, and that Art. 2278, R. C. S., be amended so as to conform to above suggestion.

VII.—EVIDENCE.

That Art. 2266, R. C. S., be so amended as to apply to and embrace other open accounts than those created by sale of merchandise.

Respectfully submitted,

S. C. PADELFORD, Chairman, etc.

# PROCEEDINGS

OF THE

## EIGHTH ANNUAL SESSION

OF THE

# TEXAS BAR ASSOCIATION

HELD IN THE

CITY OF GALVESTON, JULY 10 AND 11, 1889,

WITH THE

CONSTITUTION AND BY-LAWS.

ALSO

OFFICERS, STANDING COMMITTEES AND ROLL OF MEMBERS

FOR THE YEAR 1889-90.

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AUSTIN:

PRINTED BY ORDER OF THE ASSOCIATION.

1889.

**L22831**

**FEB 26 1943**

These Proceedings are published by authority and distributed to members by the Association.

CHAS. S. MORSE, *Secretary*.

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The ninth annual session of the Association will be held in the City of Galveston, on the first Wednesday in August, A. D. 1890.

## **FOREWORD**

This is an exact photo reproduction of an original copy of the

### **PROCEEDINGS**

**of the**

### **EIGHTH ANNUAL SESSION**

**of the**

### **TEXAS BAR ASSOCIATION**

**1889**

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*December, 1942*



# TEXAS BAR ASSOCIATION.

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## CONSTITUTION.

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### ARTICLE I.—NAME AND OBJECTS OF THE ASSOCIATION.

SECTION 1. This Association shall be called the TEXAS BAR ASSOCIATION.

SEC. 2. Its objects shall be to advance the science of jurisprudence, promote the uniformity of legislation in the administration of justice throughout the State, uphold the honor of the profession of the law, and encourage cordial intercourse among its members.

### ARTICLE II.—MEMBERSHIP.

SECTION 1. Any attorney of the Texas bar, in honorable standing, upon his written application, may be admitted to membership at any regular meeting of the Association. Said application must be endorsed by three members of the Association, and a fee of \$5 shall accompany the same—\$2.50 initiation fee and \$2.50 annual dues.

SEC. 2. Such application shall be referred to the Board of Directors, who shall report the same to the Association, and, if said report be favorable, a ballot shall be taken, and if four-fifths of the members voting shall be in favor of the applicant he shall be declared elected.

### ARTICLE III.—OFFICERS AND THEIR DUTIES.

SECTION 1. The officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, who shall be chosen by ballot at a regular meeting, by a majority of the members present and voting.

SEC. 2. There shall be a Board of Directors, five in number, elected at the same time and in the same manner with the officers; and the President and Vice President shall be ex-officio members of the Board.

SEC. 3. The officers and Directors shall hold their places for one year, and until their successors shall be elected; provided that the same person shall not be elected President two years in succession.

SEC. 4. The duties of officers shall be such as usually devolve upon such positions, and may be regulated and prescribed from time to time by the Constitution, By Laws or resolutions of the Association.

SEC. 5. The Board of Directors shall have exclusive authority, and shall

exercise executive supervision over the affairs of the Association between its meetings.

SEC. 6. Vacancies in the offices and Board of Directors shall be filled by the Board, the concurrence of a majority of whom shall be necessary to a choice.

#### ARTICLE IV.—COMMITTEES.

SECTION 1. The following committees shall be appointed annually by the President for the year ensuing, and shall consist of five members each: On Jurisprudence and Law Reform; on Judicial Administration and Remedial Procedure; on Legal Education and Admission to the Bar; on Commercial Law; on Publication; on Grievances and Discipline.

SEC. 2. A committee of three, of whom the Secretary shall always be one, shall be appointed by the President at each annual meeting of the Association, whose duty it shall be to report to the next meeting the names of all members who shall in the interval have died, with such notices of them as shall, in the discretion of the committee, be proper.

#### ARTICLE V.—GENERAL POWERS.

SECTION 1. This Association shall have power to impose fines, assess fees and establish by-laws for its government. It shall have power to remove officers, and suspend or expel members for good cause, upon written charges exhibited against them by a member, and due notice given of the charges and of the time they will be brought before the Association.

SEC. 2. The By-Laws shall prescribe the assessments to be levied on the members for the support of the Association and the promotion of its objects.

#### ARTICLE VI.—QUORUM.

SECTION 1. Twenty-five members in regular standing shall constitute a quorum for the transaction of business.

#### ARTICLE VII.—ANNUAL ADDRESS.

SECTION 1. The President shall open each meeting of the Association with an address, in which he shall communicate the noteworthy changes in statutory and constitutional law, and especially such changes as affect the development and progress of the law and the administration of justice.

#### ARTICLE VIII.—MEETINGS.

SECTION 1. A majority of the members present at an annual meeting of this Association shall designate the time and place for holding the next annual meeting.

#### ARTICLE IX.—AMENDMENTS.

SECTION 1. All propositions to alter, amend or add to this Constitution shall be made in writing at a meeting of the Association, and filed with the Secretary at least one month before being acted upon, and shall not be adopted without the concurrence of two-thirds of all the members present.

#### ARTICLE X.—DUES.

SECTION 1. Each member of the Association shall pay to the Secretary the sum of \$2.50 as annual dues.

## BY-LAWS.

### ARTICLE I.—PRESIDING OFFICERS.

SECTION 1. The President, and in his absence the Vice President, shall preside at all meetings of the Association; if neither of these officers be present, a President pro tem. shall be chosen by and from the attending members.

### ARTICLE II.—ADDRESSES AND ESSAYS.

SECTION 1. The Board of Directors, at its first meeting after each annual meeting, shall select some person to make an address at the next annual meeting, and not exceeding six persons to read papers.

### ARTICLE III.—ANNUAL MEETINGS AND ORDER OF BUSINESS.

SECTION 1. The order of exercises at the annual meetings shall be as follows:

1. Opening address of the President.
2. The nomination and election of members.
3. Report of the Board of Directors.
4. Election of the Board of Directors.
5. Reports of the Secretary and Treasurer.
6. Reports of Standing Committees, as follows: On Jurisprudence and Law Reform; on Judicial Administration and Remedial Procedure; on Legal Education and Admission to the Bar; on Commercial Law; on Publication; on Grievances and Discipline.
7. Reports of Special Committees.
8. The nomination of officers.
9. Miscellaneous business.
10. The election of officers.
11. The annual address, to be delivered by the person selected by the Board of Directors, shall be made at the morning session of the second day of the annual meeting.

SEC. 2. This order of business may be changed at any meeting by a vote of a majority of the members present; and, except as otherwise provided by the Constitution or By Laws, the usual parliamentary rules and orders will govern the proceedings.

SEC. 3. No person shall speak more than ten minutes at a time, nor more than twice on the same subject.

SEC. 4. A stenographer shall be employed at each annual meeting.

SEC. 5. Each county bar association may annually appoint delegates, not exceeding three in number, to the next meeting of the Association, and such delegates shall be entitled to all the privileges of membership at and during said meeting.

SEC. 6. All papers read before the Association shall be lodged with the Secretary. The annual address of the President, the reports of the com-



mittees and proceedings of the annual meetings shall be printed, but no other address made or paper read or presented shall be printed except by order of the Committee on Publication.

SEC. 7. The Board of Directors shall, as soon as parties have been selected to deliver the annual address and read essays, notify the Secretary of this Association of such selections, and of any other matters of especial interest to be brought before the next annual meeting.

SEC. 8. The Secretary shall be and is hereby required to mail each member of the Association, ten days before each annual meeting, a written or printed notice of the time and place of such meeting, giving a statement of the addresses to be delivered, the papers to be read and any other matters of especial interest, and shall also cause such notice to be published.

#### ARTICLE IV.—MEMBERSHIP AND DUES.

SECTION 1. The initiation fee to entitle a person to membership shall be five dollars, which shall include the annual dues for the first year.

SEC. 2. The annual dues shall be payable at the annual meeting in advance, and should any member neglect to pay them for any year at or before the next annual meeting, he shall cease to be a member. The Secretary shall give notice of this By-Law, within sixty days after each meeting, to all members in default.

#### ARTICLE V.—OFFICERS AND COMMITTEES.

SECTION 1. The terms of office of all officers elected at the annual meeting shall commence at the adjournment thereof, except the Board of Directors, whose term of office shall commence immediately upon their election.

SEC. 2. The President shall appoint all committees, except the Committee on Publication, within thirty days after the annual meeting, and shall announce them to the Secretary, who shall promptly give notice to the persons appointed. The Committee on Publication shall be appointed on the first day of each meeting.

SEC. 3. The Secretary's and Treasurer's reports shall be examined and audited by the Board of Directors before their presentation to the Association.

SEC. 4. The Board of Directors and all standing committees shall meet on the day preceding each annual meeting, at the place where the same is to be held, at such hour as their respective chairmen shall appoint, and should any member of any committee be absent, the vacancy may be filled by the members of the committee present.

SEC. 5. The Committee on Publication shall meet within one month after each annual meeting, at such time and place as the chairman shall appoint.

SEC. 6. Special meetings of any committee shall be held at such times and places as the chairman thereof may appoint; reasonable notice shall be given by him to each member by mail.

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**ARTICLE VI.—DUTIES OF COMMITTEES.**

**SECTION 1.** It shall be the duty of the Committee on Jurisprudence and Law Reform to consider and report to the Association such amendments to the law as in its opinion should be adopted; also to scrutinize proposed changes in the law, and, when necessary, report upon the same.

**SEC. 2.** It shall be the duty of the Committee on Judicial Administration and Remedial Procedure to observe the practical working of the judicial system of the State, and recommend, by written or printed report, from time to time, any changes therein which observation or experience may suggest.

**SEC. 3.** It shall be the duty of the Committee on Legal Education and Admission to the Bar to report the most suitable means for promoting and facilitating the study of the law, and the necessity or propriety of elevating the standard of qualifications for admission to the bar, and the best means for accomplishing that object.

**SEC. 4.** It shall be the duty of the Committee on Commercial Law to report the best means to produce uniformity in commercial law and usages.

**SEC. 5.** The Committee on Publication shall pass upon and have printed all papers, should they deem them of sufficient importance, except as it is otherwise provided by the Constitution and By-Laws.

**SEC. 6.** The Committee on Grievances and Discipline shall report as to the best means of upholding the honor and dignity of the law in the professional intercourse among the members of the Association. All complaints against the members of this Association shall be presented to this committee, and if the committee shall be of the opinion that the matters alleged are of sufficient importance, they will determine upon the course of procedure for the trial of the same; and shall give notice to the party charged of the nature of the complaint and the time of the trial thereof by the Association; all of which the complainant shall also be notified of by the committee.

**ARTICLE VII.—RESOLUTIONS.**

**SECTION 1.** No resolution complimentary to any officer or member, for any service performed, paper read or address delivered, shall be considered by this Association.

**ARTICLE VIII.—AMENDMENTS.**

**SECTION 1.** These By-Laws may be amended at any meeting of the Association, by a vote of two-thirds of those present, provided that a copy of the proposed amendment shall have been filed with the Secretary on or before the first day of such annual meeting.

PROCEEDINGS  
OF THE  
EIGHTH ANNUAL SESSION  
OF THE  
TEXAS BAR ASSOCIATION,  
HELD IN  
THE CITY OF GALVESTON, JULY 10 AND 11, 1889.

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*FIRST DAY—MORNING SESSION.*

GALVESTON, TEXAS, July 10, 1889.

The eighth annual session of the Texas Bar Association met in Harmony Hall, in the city of Galveston, Texas, on Wednesday, July 10, A. D. 1889, at 11 o'clock a. m.

The meeting was called to order by Hon. F. CHAS. HUME, President of the Association.

The following officers were present:

F. CHAS. HUME, President.

CHAS. S. MORSE, Secretary.

H. W. LIGHTFOOT and A. M. JACKSON, Jr., of the Board of Directors.

ROBT. G. STREET, Chairman of Committee on Jurisprudence and Law Reform.

L. B. DAVIS, of the Committee on Legal Education and Admission to the Bar.

NORMAN G. KITTRELL, Chairman of Committee on Deceased Members.

SETH SHEPARD, Chairman of Committee on Address to the Bar.

A quorum being present, roll call was dispensed with, and the President declared the Association duly opened and ready for business.

The President then read his annual address. (See Appendix.)

The Board of Directors made the following report:

*To the President and Members of the Texas Bar Association:*

GENTLEMEN—Your Board of Directors, having filled all vacancies in the Board, beg leave to report as follows:

The following members of the bar have made application for membership in this Association,

JAMES R. BURNETT, Palestine;

J. B. DIBRELL, Seguin;

PINCKNEY S. FORD, Cameron;

JOSEPH E. GILBERT, Greenville;

JOHN N. HENDERSON, Bryan;

W. W. KING, San Antonio,

THOMAS MONTROSE, Greenville;

A. T. PATRICK, Houston;

WM. S. TEMPLE, San Antonio;

ARTHUR C. TOMPKINS, Hempstead;

And said gentlemen having been duly recommended, as required by the Constitution, and their initiation fees and first annual dues having been paid, we respectfully recommend them for membership in the Association.

We also beg leave to report that we have examined and audited the reports of the Secretary and Treasurer, and find them correct.

It having come to our knowledge that many members have failed to pay their dues, we recommend that the Secretary be authorized and directed to draw a draft upon each member for such sum of money as he may be due to the Association, after first giving reasonable notice of such draft.

Respectfully submitted.

HENRY W. LIGHTFOOT,

A. M. JACKSON, JR.,

GEO. GOLDTHWAITE,

S. H. LUMPKIN,

LEO N. LEVI.

The following members were elected to constitute the Board of Directors for the ensuing year:

S. C. PADELFORD, Cleburne.

LEO N. LEVI, Galveston.

H. W. LIGHTFOOT, Paris.

SETH SHEPARD, Dallas.

J. H. MCLEARY, San Antonio.

ROBT. G. STREET, Chairman of the Committee on Jurisprudence and Law Reform, asked for and was granted until to-morrow morning to make the report.

L. B. DAVIS, for the Committee on Legal Education and Admission to the Bar, asked for and was granted until to-morrow morning to make the report.

NORMAN G. KITTRELL, Chairman of the Committee on Deceased Members, made the following report (see Appendix), which was received, and the committee was allowed to make a further and supplementary report at any time during the meeting.

Gen. MAXEY and Hon. O. M. ROBERTS each paid a glowing tribute to the memory of Judge W. P. BALLINGER.

The President appointed the following Committee on Publication: W. D. WILLIAMS, A. M. JACKSON, JR., T. S. HENDERSON, S. H. LUMPKIN, THOS. J. BALLINGER.

On motion of H. W. LIGHTFOOT, the Association adjourned until to-morrow morning at 10 o'clock.

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### *SECOND DAY—MORNING SESSION.*

THURSDAY, July 11, 1889.

The President called the meeting to order at 10 o'clock a. m.

The President laid before the Association a communication and papers from the National Bar Association, and upon motion they were referred to the following committee: PRESLEY K. EWING, S. C. PADELFORD and JAS. B. STUBBS.

The Board of Directors made the following report:

*To the President and Members of the Texas Bar Association:*

GENTLEMEN—The Board of Directors respectfully report that the following applications for membership have been referred to them, viz.:

THOS. J. BALLINGER, Galveston;

PRESLEY K. EWING, Houston;

R. S. LOVETT, Dallas;

A. G. MOSELEY, Denison;

SAM R. PERRYMAN, Houston;

JOHN G. TOD, Houston;

W. C. WEAR, Hillsboro.

We find that the applicants have complied with all the requirements of the laws of the Association and are qualified for membership. We therefore recommend that they be admitted to membership.

Respectfully submitted.

S. C. PADELFORD,  
HENRY W. LIGHTFOOT,  
LEO N. LEVI,  
SETH SHEPARD,  
J. H. MCLEARY.

The report was received and the applicants balloted for and elected.

The President appointed Hon. M. C. McLEMORE to conduct Gen. S. B. MAXEY to the stand, who then delivered the annual address. (See Appendix.)

Ex-Chief Justice O. M. ROBERTS was then conducted to the stand, and, after a few introductory and explanatory remarks, read a paper on the "Elements of Pleading." (For a synopsis of which see Appendix.)

Hon. ROBT. G. STREET, Chairman of the Committee on Jurisprudence and Law Reform, made the following written report. (See Appendix.)

Hon. J. H. McLEARY presented the following resolution:

*Resolved*, That a committee of five be appointed by the chair to consider the existing state of the law in Texas in regard to the matters treated of in the report of the Committee on Jurisprudence and Law Reform, to whom said report shall be referred, and that said special committee be instructed to report to this Association at the annual meeting in 1890, by a bill to be presented to the Legislature or otherwise.

(Signed)

J. H. McLEARY,  
J. B. DIBRELL,  
WALTER GRESHAM.

On motion, the resolution was unanimously adopted, and the chairman appointed the following committee:

ROBT. G. STREET, J. H. McLEARY, A. P. McKINNON, M. C. McLEMORE and L. B. DAVIS.

The Committee on Legal Education and Admission to the Bar was excused from making a report on account of the absence of its chairman.

Hon. E. B. PERKINS, chairman of the Committee on Commercial Law, made the following report.

*To the Hon. F. Charles Hume, President of the Texas Bar Association:*

Your Committee on Commercial Law submit the following report for the consideration of this Association:

*I. Bills and Notes:*

That our statutes be so amended that, in a suit on any bill, note or other written instrument signed by the party sought to be charged, the plaintiff shall be entitled to a judgment by default, unless the defendant in such action shall plead under oath some special defense, such as non est factum, counter claim, failure of consideration, etc.

*II. Property Subject to Execution:*

That bills, notes, accounts, and all other choses in action, be made subject to execution and forced sale for the payment of debts.

### *III. Mortgages and Deeds of Trust:*

That all mortgages and deeds of trust, with possession delivered to a trustee, be by statute made void as to all creditors not secured thereby.

### *IV. Receivers:*

That the courts of record of this State be by statute empowered to appoint receivers:

1. Whenever a subsequent attaching creditor shall show to the satisfaction of the court that the prior attachments were fraudulent, or were levied by the consent of or collusion with the defendant in such writs, and that the property will probably be sacrificed at forced sale.

2. Whenever a creditor shall show to the satisfaction of the court that his debtor has not sufficient property subject to execution to satisfy his debt, that can be reduced to possession by the sheriff, and that the debtor probably has money or choses in action subject to such debt.

3. And to authorize and require such receiver to institute such proceedings as may be necessary to compel such debtor, or any one acquainted with the facts, to discover the exact nature, location and description of all the property of such debtor, including money and choses in action, and to authorize such receiver to reduce such property to possession and apply the same to the payment of the debts of such debtor.

### *V. Garnishment:*

That the statutes relating to garnishments be so amended that the writ may issue, in such cases as a writ of attachment may issue, on a simple statement, in the original petition, of the name and residence of the party believed to be indebted to the defendant.

### *VI. Fraudulent Purchase, Personal Property:*

Our statutes should provide that, where one purchases personal property with the fraudulent intent of not paying therefor, that the title should not pass, and that the vendor might recover the same by suit, or by claim bond, where the same had been taken under execution or attachment.

### *VII. Estates of Decedents:*

Our probate law should provide for the payment of claims by an executor or administrator within six instead of twelve months.

### *VIII. Corporations:*

1. That our Constitution should be so amended that banks might be incorporated under the State law.

2. That under such constitutional amendment a statute should be passed, similar to the national bank act, placing such banks as might be organized, under the control of the proper State department.

3. Our statutes should provide for the formation of corporations for the transaction of mercantile business, without the present restrictions.

### *IX. Foreign Mortgage Companies:*

Mortgage and trust companies, chartered by other States, should be required, before they are permitted to lend money on real estate in Texas, to become domiciled in the State, to such an extent that those acting for

them shall be deemed their general agents, for the purposes of notice and service.

*X. Sales of Realty Under Mortgage or Trust Deed:*

All sales of real estate, by virtue of a mortgage or trust deed, should be subject to the right of redemption within a reasonable time.

We heartily endorse the recommendations of your committee, made at the last annual meeting of this Association.

Respectfully submitted.

E. B. PERKINS, Chairman.

Hon. M. C. McLEMORE moved that the report just read be considered by sections.

The motion was adopted, and, pending further action, the Association adjourned until 3:30 o'clock p. m.

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*SECOND DAY—EVENING SESSION.*

Meeting called to order by the President at 3:30 o'clock p. m.

The report of the Committee on Commercial Law was then taken up and the first section read.

Motion to adopt was lost.

On motion, a reconsideration was had, and Judge GOLDTHWAITE moved to strike out all after the word "defense."

Messrs. ROBERTS, SHEPARD, STREET and DAVIS addressed the Association on the motion.

Mr. STREET moved to recommit, which was opposed by Mr. SHEPARD and Gen. MAXEY.

Gen. McLEARY moved to amend by adding that the committee report a bill at the next annual meeting. Lost.

Col. SHEPARD again addressed the Association in opposition to the motion to recommit.

Motion to recommit was lost.

A vote was then taken on the motion to adopt the section as amended by Judge GOLDTHWAITE, by striking out all after the word "defense."

Motion carried.

Gov. ROBERTS moved to amend by adding, after the word "defense," the following:

Provided, That the obligation sued on shall be inspected by the court to see that it corresponds with the petition in the case.



Motion prevailed, and the section as amended was adopted.

On motion, section 2 was adopted.

Section 3 was, on motion, laid on the table.

Section 4 was amended, on motion of Judge GOLDTHWAITE, by adding thereto "that these remedies shall be cumulative of all present existing remedies."

Section 5 was, on motion of M. C. McLEMORE, laid on the table.

Section 6 was not adopted.

Section 7 was adopted.

Section 8 was more minutely considered in subdivisions.

Subdivision 1 was adopted.

Subdivision 2 of section 8 was amended by striking out the words "similar to the national bank act."

Mr. SHEPARD moved to amend subdivision 3 by adding thereto the following:

Provided, That the same be accompanied by such legislation as will provide supervision in order to prevent the creation of fictitious stock and indebtedness and tend to prevent the perpetration of fraud.

The amendment was accepted.

Judge GOLDTHWAITE and Judge CLEVELAND addressed the Association in opposition to the adoption of the subdivision.

A vote being taken, the motion to adopt was lost, and subdivision 3 was not adopted.

Section 9 was adopted.

Section 10 was tabled.

On motion of J. H. McLEARY, Esq., the committee who made the report were requested to continue their labors and report more fully to the next annual meeting, by nature of a bill or otherwise.

J. H. McLEARY, Esq., moved that the Committee on Commercial Law be instructed to report at the next annual meeting a bill incorporating such parts of the report of the present Committee on Commercial Law, just under discussion, as have been adopted.

Motion prevailed.

Hon. N. G. KITTBELL offered the following, which was referred to the same committee, to be reported on at the next annual meeting:

*Resolved*, That a statute should be enacted providing that where a sale of personal property is made in fraud of creditors, a suit may be brought

by any judgment creditor directly against the fraudulent purchaser without the necessity of first seizing by attachment or execution the property so fraudulently sold; and that this resolution be referred to the committee on commercial law, to be considered in connection with the report made by the committee on commercial law at this meeting.

The special committee on the expediency of election of delegates to the National Bar Association made the following report, which was adopted:

*To the Hon. F. Charles Hume, President of the Texas Bar Association:*

The undersigned committee touching the election of delegates to the National Bar Association of the United States, respectfully reports as follows:

The said National Bar Association was organized in A. D. 1888, held its first annual meeting at Cleveland, Ohio, August 8 and 9 of same year, and is to hold its second annual meeting at Green Briar White Sulphur Springs, West Virginia, on July 31, 1889. The object of this association is, in addition to the usual objects for which Bar Associations are formed, the promotion of "the unification, so far as practicable, of the laws of the various States which relate to matters in which the people of the United States have a common interest." The purpose of the Association is not to supplant the American Bar Association. The plans of membership adopted by the two Associations are so widely different that they operate as a complement, one to the other. The membership of the latter is mainly individual; for, while delegates are admitted from local associations, such delegates serve at but one meeting, and are thus debarred from work on committees to report at the succeeding meeting. The membership of the National Bar Association, on the other hand, is purely representative, being entirely composed of delegates from State and local associations on the basis of not more than three delegates per fifty members, they being elected according to the rotation system for the period of one, two and three years at the first election, and thereafter each new delegate being elected for three years. The dues against the State or local association sending delegates are five dollars annually for each delegate. We conclude, from a report of the proceedings of said National Bar Association, that the Association, though in its infancy, is even now in a flourishing condition. It has representatives from about twenty States and from several Territories, besides from the District of Columbia. It is the sense of the committee that the objects for which the Association is formed are laudable, and should be encouraged; and we therefore recommend that the Association do elect delegates to the said National Bar Association, to be in attendance on the latter named Association at its next annual meeting.

All of which is respectfully submitted.

PRESLEY K. EWING, Chairman.

S. C. PADEL FORD.

\ JAS. B. STUBBS.

### ELECTION OF OFFICERS.

The following officers were elected for the ensuing year:

H. W. LIGHTFOOT, of Paris, President.

NORMAN G. KITTRELL, of Jewett, Vice-President.

CHAS. S. MORSE, of Austin, Secretary.

W. D. WILLIAMS, of Austin, Treasurer.

On motion, the President was authorized to appoint three delegates and three alternates to the American Bar Association and to the National Bar Association.

Galveston was selected as the place, and the first Wednesday in August, 1890, as the time, for holding the next annual meeting.

H. W. LIGHTFOOT, President elect, was then introduced, and addressed the Association. He resigned his position on the Board of Directors, and Judge E. B. Perkins, of Gainesville, was elected to fill the vacancy. After which the Association adjourned, to meet again in the city of Galveston on the first Wednesday in August, A. D. 1890.

CHAS. S. MORSE, Secretary.



## OFFICERS AND COMMITTEES.

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|                         |                             |        |
|-------------------------|-----------------------------|--------|
| HENRY W. LIGHTFOOT..... | <i>President</i> .....      | Paris  |
| NORMAN G. KITTRELL..... | <i>Vice President</i> ..... | Jewett |
| CHAS. S. MORSE.....     | <i>Secretary</i> .....      | Austin |
| W. D. WILLIAMS .....    | <i>Treasurer</i> .....      | Austin |

### BOARD OF DIRECTORS.

|                       |             |
|-----------------------|-------------|
| S. C. Padelford. .... | Cleburne    |
| Leo N. Levi.....      | Galveston   |
| Seth Shepard.....     | Dallas      |
| J. H. McLeary .....   | San Antonio |
| E. B. Perkins .....   | Greenville  |

### *Committee on Jurisprudence and Law Reform.*

|                           |             |
|---------------------------|-------------|
| 1. Seth Shepard.....      | Dallas      |
| 2. J. W. Terry ....       | Galveston   |
| 3. George Clark.....      | Waco        |
| 4. Jno. A. Green, Sr..... | San Antonio |
| 5. J. E. Gilbert.....     | Greenville  |

### *Committee on Judicial Administration and Remedial Procedure.*

|                           |          |
|---------------------------|----------|
| 1. R. R. Gaines.....      | Paris    |
| 2. J. M. Hurt.....        | Dallas   |
| 3. Walter Acker .....     | Lampasas |
| 4. A. W. Terrell.....     | Austin   |
| 5. John N. Henderson..... | Bryan    |

### *Committee on Legal Education and Admission to the Bar.*

|                         |            |
|-------------------------|------------|
| 1. R. S. Gould, Sr..... | Austin     |
| 2. Walter Gresham.....  | Galveston  |
| 3. Geo. T. Todd .....   | Jefferson  |
| 4. Sam J. Hunter.....   | Fort Worth |
| 5. B. D. Tarlton.....   | Hillsboro. |

*Committee on Commercial Law.*

1. F. Chas. Hume.....Galveston
2. T. J. Beall.....El Paso
3. C. L. Potter.....Gainesville
4. M. L. Sims.....Clarksville
5. Presley K. Ewing.....Houston

*Committee on Grievances and Discipline.*

1. John Hancock.....Austin
2. A. M. Carter.....Fort Worth
3. B. G. Bidwell.....Weatherford
4. S. H. Lumpkin.....Meridian
5. B. M. Baker.....Canadian

*Special Committee on Former Reports.*

1. Robt. G. Street.....Galveston
2. J. H. McLeary.....San Antonio
3. A. P. McKinnon.....Hillsboro
4. M. C. McLemore.....Galveston
5. L. B. Davis.....Cleburne

*Committee on Deceased Members.*

1. W. S. Robson.....LaGrange
2. Thos. McNeal.....Luling
3. Chas. S. Morse, Secretary.....Austin

*Committee on Publication.*

1. W. D. Williams.....Austin
2. A. M. Jackson, Jr.....Austin
3. T. S. Henderson.....Cameron
4. S. H. Lumpkin.....Meridian
5. Thos. J. Ballinger.....Galveston

*Delegates to American Bar Association.*

1. W. D. Williams.....Austin
2. J. H. McLeary.....San Antonio
3. E. B. Perkins.....Greenville

*Delegates to National Bar Association.*

1. A. G. Mosely ..... Denison
  2. Geo. Goldthwaite.....Houston
  3. R. M. Wynne.....Fort Worth
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[NOTE.—The President of the Association desires that the Chairman of each committee put himself in communication at once with each member of his committee, and that each committee begin, without delay, to prepare the material for a report. The selection of the committees has been made with the expectation and belief that each member of each committee will not only discharge the full measure of his duty in making a report, but that he will be personally present at the next annual meeting.]



## ROLL OF MEMBERS.

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|                          |               |                         |               |
|--------------------------|---------------|-------------------------|---------------|
| Abbott, Jo.....          | Hillsboro     | Clark, George .....     | Waco          |
| Acker, Walter.....       | Lampasas      | Clark, W. H.....        | Dallas        |
| Alexander, L. C.....     | Waco          | Cleveland, C. L.....    | Galveston     |
| Allen, W. H.....         | Terrell       | Coke, Henry C.....      | Dallas        |
| Andrews, R. W.....       | Big Springs   | Connor, T. H.....       | Eastland      |
| Antony, E. L.....        | Rockdale      | Copeland, Jno. H.....   | San Antonio   |
| Archer, Osceola.....     | Austin        | Cooper, J. F.....       | Fort Worth    |
| Atkinson, W. M.....      | Gonzales      | Coughanour, R. D.....   | Dallas        |
| Atlee, E. A.....         | Laredo        | Crain, W. H.....        | Hallettsville |
| Aubrey, Wm.....          | San Antonio   | Crank, W. H.....        | Houston       |
| Austin, Wm. J.....       | Denton        | Crawford, W. L.....     | Dallas        |
| Autry, James L.....      | Corsicana     | Crawford, M. L.....     | Dallas        |
|                          |               | Croft, William.....     | Corsicana     |
| Baker, Jas. A., Jr.....  | Houston       | Croom, J. S., Jr.....   | Belton        |
| Ball, Robt. L.....       | Colorado City | Culberson, Chas. A..... | Dallas        |
| Ball, F. W.....          | Fort Worth    | Cunningham, J. D.....   | Kaufman       |
| Bailey, W. J.....        | Fort Worth    |                         |               |
| Ballingier, Thos. J..... | Galveston     | Davidson, R. V.....     | Galveston     |
| Barry, B. T.....         | Corsicana     | Davidson, W. L.....     | Richmond      |
| Bassett, B. H.....       | Brenham       | Davis, Geo. W.....      | Dallas        |
| Beall, T. J.....         | El Paso       | Davis, L. B.....        | Cleburne      |
| Bell, C. K.....          | Hamilton      | DeArmond, R.....        | McKinney      |
| Bergstrom, Oscar.....    | San Antonio   | Delaney, W. S.....      | Columbus      |
| Bidwell, B. G.....       | Weatherford   | Denson, W. B.....       | Galveston     |
| Blake, S. R.....         | Bellville     | Dennis, Isaac N.....    | Wharton       |
| Blair, T. A.....         | Waco          | Devine, Thos. J.....    | San Antonio   |
| Blanding, J. M.....      | Corsicana     | Dibrell, J. B.....      | Seguin        |
| Bledsoe, D. T.....       | Cleburne      | Dickinson, F. C.....    | Rusk          |
| Bots, W. B.....          | Houston       | Dickson, Joseph M.....  | Dallas        |
| Bower, E. G.....         | Dallas        | Dodd, Thos. W.....      | Laredo        |
| Bright, W. R.....        | Corsicana     | Dowell, John.....       | Austin        |
| Brown, T. J.....         | Sherman       | Douglass, W. L.....     | Beaumont      |
| Brown, W. M.....         | Austin        | Drought, H. P.....      | San Antonio   |
| Brown, R. L.....         | Austin        |                         |               |
| Burges, W. H.....        | Seguin        | Eaton, O. S.....        | Fort Worth    |
| Burnett, James R.....    | Palestine     | Edmonds, Elias.....     | San Antonio   |
| Burts, Jas. H.....       | Austin        | Edmundson, C.....       | Sherman       |
|                          |               | Elgin, John E.....      | Waco          |
| Callaghan, Bryan.....    | San Antonio   | Evans, Chas. I.....     | Dallas        |
| Campbell, A. R.....      | Galveston     | Ewing, Presley K.....   | Houston       |
| Capps, Wm.....           | Fort Worth    |                         |               |
| Carleton, Fred.....      | Austin        | Farrar, L. J.....       | Groesbeck     |
| Carrington, A. H.....    | Wichita Falls | Finley, N. W.....       | Tyler         |
| Carrington, W. A.....    | Houston       | Finley, Geo. P.....     | Galveston     |
| Carr, J. S.....          | San Antonio   | Fisher, A. S.....       | Georgetown    |
| Carraway, T. J.....      | Jasper        | Fisher, Sam R.....      | Austin        |
| Carroll, J. A.....       | Denton        | Flournoy, W. M.....     | Waco          |
| Carter, A. M.....        | Fort Worth    | Flood, W. W.....        | Wichita Falls |
| Carter, Champe.....      | Calvert       | Fly, W. S.....          | Gonzales      |
| Cate, M. H.....          | Mincola       | Foard, R. L.....        | Columbus      |
| Charlton, Wm.....        | Terrell       | Fontaine, Sydney T..... | Galveston     |
| Chesley, A.....          | Bellville     | Ford, Pinckney S.....   | Cameron       |

|                    |                |                     |              |
|--------------------|----------------|---------------------|--------------|
| Ford, T. W.        | Jasper         | Hogsett, J. Y.      | Fort Worth   |
| Franklin, Joseph   | Galveston      | Holmes, H. M.       | Austin       |
| Franklin, R. M.    | Galveston      | Houston, B. J.      | Fort Worth   |
| Franklin, Thos. H. | San Antonio    | Houston, A. W.      | San Antonio  |
| Freeman, G. R.     | Hamilton       | Houston, Reagan     | San Antonio  |
| Frost, Sam R.      | Corsicana      | Howard, Russell     | Floresville  |
| Fulton, Marshall   | Mason          | Hume, F. Charles    | Galveston    |
| Fulmore, Z. T.     | Austin         | Hunter, Sam J.      | Fort Worth   |
|                    |                | Hurt, J. M.         | Dallas       |
|                    |                | Hutchings, R. M.    | Galveston    |
| Gaines, W. P.      | Austin         |                     |              |
| Gammage, T. T.     | Palestine      | Ivy, V. H.          | Hillsboro    |
| Gano, W. B.        | Dallas         |                     |              |
| Gardner, B. H.     | Fairfield      | Jack, D. M.         | Galveston    |
| Garrett, C. C.     | Brenham        | Jackson, A. M., Jr. | Austin       |
| Garrett, N. P.     | Cameron        | Jackson, Hugh       | Wallisville  |
| Garrison, Jas. L.  | Henderson      | Jennings, Hyde      | Fort Worth   |
| Gibbs, B.          | Dallas         | Jerdone, W. M.      | Galveston    |
| Gibson, Jas. P.    | Rusk           | Johnston, W. M.     | Centerville  |
| Giles, W. M.       | Mincola        | Johnson, T. L.      | Seguin       |
| Gilbert, Joseph E. | Greenville     | Jones, S. W.        | Galveston    |
| Givens, Jno. S.    | Corpus Christi | Jordon, C. W.       | Cleburne     |
| Geer, M. R.        | Marshall       | Joseph, Thos. M.    | Galveston    |
| Goldthwaite, Geo.  | Houston        |                     |              |
| Gooch, Jno. Y.     | Palestine      | Keaghey, Jno. L.    | Jasper       |
| Goodrich, L. W.    | Marlin         | Kelley, D. A.       | Waco         |
| Gordon, Jno. A.    | Decatur        | Kilgore, C. B.      | Will's Point |
| Gould, R. S., Sr.  | Austin         | Kilgore, S. B.      | Will's Point |
| Gould, R. S., Jr.  | Bryan          | Kirk, Lafayette     | Brenham      |
| Grace, Chas. D.    | Bonham         | King, W. W.         | San Antonio  |
| Graham, W. J.      | Henderson      | Kincaid, W. A.      | Groesbeck    |
| Graham, A. H.      | Austin         | Kirvin, O. C.       | Fairfield    |
| Green, Jno. A.     | San Antonio    | Kittrell, N. G.     | Jewett       |
| Green, N. O.       | San Antonio    | Kleberg, M. E.      | Galveston    |
| Greene, S. P.      | Fort Worth     | Kleberg, Rudolph    | Cuero        |
| Greer, H. W.       | Beaumont       | Kone, Ed. R.        | San Marcos   |
| Gresham, Walter    | Galveston      |                     |              |
| Griggsby, W. H.    | Mobeetie       | Labatt, H. J.       | Galveston    |
| Grimes, S. F.      | Cuero          | Lane, E. R.         | San Antonio  |
| Grothaus, L. C.    | San Antonio    | Lane, John          | LaGrange     |
| Guinn, R. H.       | Rusk           | Lea, James V.       | Cold Springs |
|                    |                | Ledbetter, W. H.    | LaGrange     |
| Haidusek, A.       | LaGrange       | Leopold, Louis      | Galveston    |
| Haggerty, J. J.    | Bellville      | Leasing, W. H.      | Waco         |
| Hamblen, E. P.     | Houston        | Levi, Leo N.        | Galveston    |
| Hancock, John      | Austin         | Lewis, Everett      | Gonzales     |
| Haney, Jasper N.   | Weatherford    | Lightfoot, H. W.    | Paris        |
| Harcourt Jno. T.   | Weatherford    | Lockett, C. C.      | Caldwell     |
| Hare, Silas        | Sherman        | Lovett, R. S.       | Dallas       |
| Harris, A. J.      | Belton         | Looney, F. B.       | Oakwoods     |
| Harrison, R. H.    | Waco           | Looscan, M.         | Houston      |
| Harwood, T. M.     | Gonzales       | Lovejoy, John       | Galveston    |
| Harwood, T. F.     | Gonzales       | Lumpkin, S. H.      | Meridian     |
| Hefley, W. T.      | Cameron        | Lyle, Richard       | Cameron      |
| Henderson, John N. | Bryan          |                     |              |
| Henderson, T. S.   | Cameron        | Mann, H. K.         | Galveston    |
| Henry, Jno. L.     | Dallas         | Mantooth, Edwin J.  | Homer        |
| Herring, M. D.     | Waco           | Marr, D. P.         | Pearsall     |
| Hill, R. J.        | Austin         | Martin, Thos. P.    | Fort Worth   |
| Hogan, W. A.       | Indianola      |                     |              |



|                         |                |                        |             |
|-------------------------|----------------|------------------------|-------------|
| Masterson, B. T.....    | Galveston      | Priest, M. D.....      | Fort Worth  |
| Mason, George.....      | Galveston      | Proctor, D. C.....     | Cuero       |
| Matlock, A. L.....      | Montague       |                        |             |
| Maxey, F. S.....        | Austin         | Quinan, George.....    | Wharton     |
| Maxey, S. B.....        | Paris          |                        |             |
| Mayfield, C. H.....     | San Antonio    | Rainey, Anson.....     | Waxahachie  |
| McCampbell, Jno. S..... | Corpus Christi | Randle, E. B.....      | Fort Worth  |
| McComb, Jno. E.....     | Montgomery     | Read, F. N.....        | Corsicana   |
| McCormick, George.....  | Columbus       | Rector, Jno. B.....    | Austin      |
| McCoy, John C.....      | Dallas         | Rector, N. A.....      | Austin      |
| McDonald, W. L.....     | Dallas         | Reese, T. S.....       | Hempstead   |
| McFarland, J. B.....    | Brenham        | Reave, S. D.....       | Tyler       |
| McKay, H.....           | Jefferson      | Roach, I. N.....       | Weatherford |
| McKie, W. J.....        | Corsicana      | Roberts, J. C.....     | Fairfield   |
| McKinnon, Nell L.....   | Schulenberg    | Roberts, O. M.....     | Austin      |
| McKinnon, A. P.....     | Hillsboro      | Robertson, John W..... | Austin      |
| McLean, W. P.....       | Mount Pleasant | Robertson, Sawnie..... | Dallas      |
| McLeary, J. H.....      | San Antonio    | Robertson, H. G.....   | Dallas      |
| McLemore, M. C.....     | Galveston      | Robinson, C. S.....    | San Antonio |
| McNeal, Thomas.....     | Luling         | Robson, W. S.....      | LaGrange    |
| Miller, T. S.....       | Dallas         | Rogers, R. A.....      | Fort Worth  |
| Mills, A. N.....        | Galveston      | Rose, Forster.....     | Galveston   |
| Minyard, W. M.....      | Dallas         | Russell, L. B.....     | Comanche    |
| Mitchell, J. W.....     | Houston        | Russell, T. J.....     | Beaumont    |
| Minor, F. D.....        | Galveston      | Russell, D. L.....     | Belton      |
| Montrose, Thomas.....   | Greenville     | Rugeley, R. D.....     | Montague    |
| Moore, Jno. M.....      | Albany         |                        |             |
| Moore, W. F.....        | Houston        | Sampson, Alex.....     | Galveston   |
| Morris, F. G.....       | Austin         | Saunders, X. B.....    | Belton      |
| Morgan, Richard Jr..... | Dallas         | Sayers, J. D.....      | Bastrop     |
| Moseley, A. G.....      | Denison        | Sayles, John.....      | Abilene     |
| Mott, M. F.....         | Galveston      | Sayles, Henry.....     | Abilene     |
| Murphy, J. B.....       | Corpus Christi | Scott, B. R. A.....    | Galveston   |
|                         |                | Scott, J. Z. H.....    | Galveston   |
| Newton, S. G.....       | San Antonio    | Scott, D. H.....       | Paris       |
| Noble, S. B.....        | Galveston      | Scott, J. C.....       | Fort Worth  |
|                         |                | Searcy, I. G.....      | Austin      |
| O'Brien, Geo. W.....    | Beaumont       | Searcy, W. W.....      | Brenham     |
| O'Neill, J. M.....      | Fort Worth     | Sebastian, W. P.....   | Cisco       |
| Oliver, W. C.....       | Houston        | Sexton, Frank B.....   | Marshall    |
| Owsley, Alvin C.....    | Denton         | Shaw, Gus.....         | Clarksville |
|                         |                | Shaw, W. N.....        | Houston     |
| Padelford, S. C.....    | Cleburne       | Sheeks, James D.....   | Austin      |
| Parks, M. H. C.....     | Fort Worth     | Shelley, N. G.....     | Austin      |
| Paschal, Geo.....       | San Antonio    | Shepard, Seth.....     | Dallas      |
| Patrick, A. T.....      | Houston        | Showalter, W.....      | Laredo      |
| Pearson, P. E.....      | Richmond       | Shropshire, E. L.....  | Comanche    |
| Perkins, E. B.....      | Greenville     | Simkins, E. J.....     | Corsicana   |
| Perryman, Sam R.....    | Houston        | Simkins, W. S.....     | Dallas      |
| Phelps, R. H.....       | LaGrange       | Simpson, Friench.....  | Columbus    |
| Plowman, Geo. H.....    | Dallas         | Simpson, Isaac P.....  | San Antonio |
| Ponton, T. J.....       | Gonzales       | Simpson, J. B.....     | Dallas      |
| Pope, W. H.....         | Marshall       | Sims, M. L.....        | Clarksville |
| Pope, A.....            | Marshall       | Sinks, Ed. R.....      | Giddings    |
| Porter, R. C.....       | Dallas         | Smith, Geo. W.....     | Colorado    |
| Porter, R. L.....       | Greenville     | Smith, Tilman.....     | Cleburne    |
| Potter, C. L.....       | Gainesville    | Solomon, E. E.....     | Wallisville |
| Prather, Wm. L.....     | Waco           | Sparkman, L. C.....    | Decatur     |
| Prendergast, F. H.....  | Marshall       | Spence, W.....         | Dallas      |

|                           |                |                         |               |
|---------------------------|----------------|-------------------------|---------------|
| Spencer, F. M.....        | Galveston      | Upson, C.....           | San Antonio   |
| Spivey, W. W.....         | Henderson      | Vernor, Henry R.....    | San Antonio   |
| Spooner, T. H.....        | Gonzales       |                         |               |
| Stayton, Jno. W.....      | Victoria       | Walker, A. S.....       | Austin        |
| Stayton, Robt. W.....     | Corpus Christi | Walker, Richard S.....  | Galveston     |
| Steadman, Wm.....         | Marshall       | Walker, R. O.....       | Austin        |
| Stephens, Jno. H.....     | Montague       | Walker, Jno. C.....     | Galveston     |
| Stewart, Joe H.....       | Austin         | Walling, W. W.....      | San Antonio   |
| Stockdale, F. S.....      | Cuero          | Walthall, L. N.....     | San Antonio   |
| Storey, L. J.....         | Lockhart       | Walton, W. M.....       | Austin        |
| Stout, J. F.....          | Corsicana      | Watts, A. T.....        | Dallas        |
| Street, Robt. G.....      | Galveston      | Waul, T. N.....         | Galveston     |
| Stubbs, James B.....      | Galveston      | Wear, W. O.....         | Hillsboro     |
| Swain, W. J.....          | Clarksville    | Webb, W. G.....         | Baird         |
| Swan, A. K.....           | Henrietta      | West, S. P.....         | Woodville     |
| Swearingen, J. T.....     | Brenham        | West, Robt. H.....      | Dallas        |
|                           |                | West, Robt G.....       | Austin        |
| Taliaferro, Sinclair..... | Houston        | Wheeler, R. T.....      | Galveston     |
| Tarilton, B. D.....       | Hillsboro      | White, Alex.....        | Dallas        |
| Taylor, L. N.....         | Runnels        | White, Jno. P.....      | Austin        |
| Temple, Wm S.....         | San Antonio    | Whitehead, J. P. C..... | Dallas        |
| Templeton, Jno. D.....    | Fort Worth     | Whitman, M. J.....      | Rusk          |
| Terrell, A. W.....        | Austin         | Willett, G. B.....      | Wichita Falls |
| Terrell, J. O.....        | Terrell        | Williams, Eugene.....   | Waco          |
| Terry, J. W.....          | Galveston      | Williams, W. D.....     | Austin        |
| Tompkins, Arthur C.....   | Hempstead      | Willie, A. H.....       | Galveston     |
| Thompson, Wells.....      | Columbus       | Willson, J. H.....      | Galveston     |
| Tod, John G.....          | Houston        | Willson, Sam A.....     | Rusk          |
| Todd, C. S.....           | Boston         | Willson, Sam P.....     | Rusk          |
| Todd, Geo. F.....         | Jefferson      | Winter, Jno. G.....     | Waco          |
| Trezevant, L. E.....      | Galveston      | Woodward, W. H.....     | Indianola     |
| Tucker, Philip C.....     | Galveston      | Woods, J. S.....        | Kaufman       |
| Thomson, T. A.....        | Austin         | Wooten, D G.....        | Dallas        |
| Terhune, E. W.....        | Greenville     | Wright, W. B.....       | Dallas        |
| Tucker, Chas. Fred.....   | Dallas         | Wright, H. B.....       | Clarksville   |
|                           |                | Wynne, R. M.....        | Fort Worth    |

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## Deceased Members.

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ADAMS, Z. T., Kaufman. Died January 9, 1886.  
ANDERSON, JAS. M., Waco. Died June 3, 1889.  
ANDREWS, A. W., Terrell. Died February 15, 1887.  
BONNER, M. H., Tyler. Died November 25, 1883.  
BALLINGER, W. P. Died January 20, 1888.  
BRADLEY, L. D., Fairfield. Died October 6, 1886.  
BRADSHAW, C. J., LaGrange. Died June 13, 1888.  
FRISBIE, W. H., Groesbeck. Died September 12, 1883.  
GOSLING, H. L., Castroville. Died February 21, 1885.  
HILL, GEORGE L., Gainesville. Died July 25, 1887.  
JACKSON, A. M., SR., Austin. Died July 11, 1889.  
JOHN, A. S., Beaumont. Died February 5, 1889.  
JONES, C. ANSON, Houston. Died January 19, 1888.  
KENNARD, JOHN R., Anderson. Died —, 1887.  
LANGUILLE, P. T., Galveston. Died October 14, 1882.  
LOGUE, L. J., Columbus. Died May 15, 1884.  
MCCOY, JOHN C., Dallas. Died April 30, 1887.  
MOORE, GEORGE F., Austin. Died August 30, 1883.  
MASON, J. R., San Antonio. Died July 29, 1888.  
OCHSE, J. E., San Antonio. Died —, 1888.  
PECK, L. L., Fairfield. Died May 30, 1885.  
PEELER, A. J., Austin. Died November 3, 1886.  
PRENDERGAST, H. D., Austin. Died November 5, 1886.  
READ, N. C., Corsicana. Died October 25, 1884.  
RUCKER, W. T., Belton. Died August 10, 1885.  
TIMMONS, B., LaGrange. Died June 17, 1884.  
WAELDER, JACOB, San Antonio. Died August 28, 1887.  
WALLACE, W. R., Castroville. Died November —, 1884.  
WARD, P. H., San Antonio. Died —, 1889.  
WEST, C. S., Austin. Died October 23, 1885.  
WILKES, F. D., Lampasas. Died November 21, 1886.

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[NOTE.—The Secretary requests all members of the Association to notify him promptly of the death of any member of the Association.]

# ADDRESS

DELIVERED BEFORE THE

## TEXAS BAR ASSOCIATION,

BY

F. CHARLES HUME, PRESIDENT.

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### *Gentlemen of the Texas Bar Association:*

Section 1, article 7, of the Constitution, requires the President to open each meeting of the Association with an address, communicating the noteworthy changes in statutory and constitutional law, and especially such as affect the development and progress of the law and the administration of justice.

So considerable is the volume of legislation enacted at Austin since our last adjournment that a literal compliance with the section named would involve observations so extended as to be irksome to you; nor is it easy to select those enactments defined as affecting the development of the law and the administration of justice, nor to decide what ought to be considered and what may be passed without comment.

I shall feel at liberty to forego, for the most part, reference to such acts as are mainly political in character and purpose, such as relate to taxation, public education, public business and its regulation and administration, and also such as embrace other subjects, whether new or old, and not involving novel principles, or otherwise appearing to warrant especial notice. Even the exercise of this liberty will leave for consideration so many topics that I can scarcely hope to compress them into terms at once lucid and brief.

### PLEADINGS, PROCESS, PROCEDURE, EVIDENCE, VENUE.

Article 1192, Revised Civil Statutes, is so amended as to allow parties to a suit to amend their pleadings in vacation, file suggestions of death, make representatives of those deceased parties and make new parties. Interventions may also be filed in vacation. Notice of all such pleadings must be given to the opposing party or counsel within five days from the filing thereof. [Act of March 6, 1889. Gen. Laws, 9, 10.]

Article 191, Revised Civil Statutes, is so amended as to authorize the defendant in a suit at any time before judgment to replevy

any property that has been seized or reached by garnishment, by delivering to the officers issuing the writ his bond with sureties conditioned for the payment of any judgment that may be rendered against the garnishee. [Act of February 9, 1889. Gen. Laws, 1.]

The venue permitted by the act of March 25, 1887 (Sayles' Civil Statutes, sec. 8a) in suits for wrongful levy of attachment or sequestration, was either the county whence the writ issued or in which the levy was made. This is amended so as to permit the suit in any county where the levy is made, "in whole or in part." [Act of March 29, 1889. Gen. Laws, 48.]

An act of April 3, 1889, requires the officer levying the writ of attachment upon real estate to file with the county clerk of the county where the real estate lies a copy of the writ and of so much of his return thereon as relates to said real estate. The clerk is then to enter in a book kept for that purpose the names of the parties in attachment, amount of the debt and the return of the officer. In the event the attachment be quashed the court of jurisdiction is to certify its order to that effect to said clerk, who records it. If the land seized be in any county other than that where the suit is pending, a failure to make said record invalidates the attachment lien as against subsequent purchasers for value and without notice and subsequent good faith lien holders. [Gen. Laws, 80, 81.]

An act of March 26, 1889, provides that the sale of a judgment or cause of action, or of any interest therein, shall be evidenced by a written transfer, which, after due acknowledgment and filing in the papers of the suit, shall be minuted by the clerk on the margin of the minute book where the judgment is recorded, or, in case judgment be not rendered when the transfer is filed, on the court trial docket. This being done, it shall constitute notice to all persons subsequently dealing with reference to the cause of action or judgment whether they have actual knowledge of such transfer or not. [Gen. Laws, 103.]

Sales of real estate, under powers conferred by contract, are required to be made in the county where the property lies, notice to be given and sales made as in case of judicial sales. Land in an unorganized county is to be sold in the county whereto such unorganized county is attached for judicial purposes; and if the land lies in two or more counties, sale thereof may be made in either, after such notice has been given in both or all. [Act of March 21, 1889. Gen. Laws, 143.]

It is made the duty of the justice of the peace, whenever land is sold under execution from his court, upon application of any party interested in the land, to make a certified transcript of the judgment and execution, together with levy and returns of officer; and the transcript so made is declared admissible to record, in like manner with deeds, in the county where the land lies, and when recorded to have like effect with deeds so recorded. A copy of

such transcript, certified by the county clerk of the county where recorded, is made admissible in evidence in like manner and with like effect as are the original judgment, execution and indorsements thereon. [Act of April 6, 1889. Gen. Laws, 133.]

It will be observed that the certified transcript named in the act is to be furnished by the justice upon the application of "any party interested in said land." The query suggests itself: Is the word party used in the sense of person, so as to entitle any person interested in the land, though not a party to the suit which resulted in the judgment and execution, to obtain and file the transcript; or is it used in its appropriate sense, as indicating one connected as a party with the suit and the judgment and at the same time interested in the land? The former construction may greatly enlarge, while the latter certainly restricts the class of persons authorized to apply for, obtain and file the certified transcript; and important rights may depend upon the question whether the one or the other is the true construction.

Duplication of subpoenas for witnesses in felony cases, save upon order of the presiding judge, is prohibited under penalty of fine from ten to one thousand dollars, and the clerk is required, as far as practicable, to include in one process all witnesses for both the State and the defendant, and the service of process on a witness at the instance of one party inures to the benefit of the other party in case the latter needs the witness. [Act of March 20, 1889. Gen. Laws, 145, 146.]

Title 4, chapter 2, Code of Criminal Procedure is amended by adding thereto articles 216a and 216b. The first authorizes the prosecution of accomplices and accessories to the crime of theft in the county where the theft is committed, or in any other county through or into which the stolen property may be carried by either principal, accomplice or accessory. The second authorizes prosecution for receiving and concealing stolen property in the county where the theft is committed, or in any other county through or into which the thief carries the property, or in any county where it may be received or concealed by the accused. [Act of April 4, 1889. Gen. Laws, 37.]

Perhaps the most radical innovation made by the Legislature during the session is that effected by the repeal of the fourth exception of article 730, Code of Criminal Procedure, whereby the defendant in a criminal action is permitted to testify in his own behalf. Where two or more are jointly charged or indicted, and a severance is had, the privilege of testifying is confined to the one on trial. [Act of April 4, 1889. Gen. Laws, 37.]

Article 683, Penal Code, is so amended as to denounce a penalty by fine not exceeding one thousand dollars against anyone wilfully or mischievously injuring or destroying any real or personal property of any description whatever in such manner as that the injury is not an offense against property otherwise provided for in the code—the fine not to exceed two hundred dollars

where the property injured is of the value of fifty dollars or less. [Act of March 22, 1889. Gen. Laws, 35, 36]

This amendment is doubtless due to the ruling of the Court of Appeals, holding that the terms of the article amended did not embrace wrongs to property other than agricultural—such, for example, as a railroad engine. [Murray vs. The State, 21 App. Cas., 620.] By the same act it is made a misdemeanor, punishable by fine, to wilfully discharge a missile or firearm into any coach or passenger car of a moving railway train.

#### LIENS.

A lengthy act provides for the enforcement of the liens of mechanics, contractors, sub-contractors, builders, laborers and material men, and repeals all laws conflicting therewith. It seems to cover substantially the same ground as does chapter 2, title 61, Revised Civil Statutes, with enlargements and modifications here and there too minute to justify specific notice in this paper. [Act of April 5, 1889. Gen. Laws, 114.]

Article 3122a, Revised Civil Statutes, is so amended as to limit the duration of a lien for rent to become due of residence, store-house or other building to a period described as that of the "current contract year," which is defined to mean a period of twelve months, reckoning from the beginning of the lease, whether the same be in the first or any other year covered by the lease. [Act of March 28, 1889. Gen. Laws, 11, 12.]

The amendment relates to an important class of contracts, and is in terms less clear, perhaps, than could be wished, although it seems to have been intended as a response to a suggestion of the Supreme Court in the case of Marsalis vs. Pitman, 68 Texas, 629.

For example: Suppose the lease is for two years at a fixed rate per year, payable annually, and that the first year's rental has been paid and the second year's occupation begun. Does the law mean that the lessor has no lien for the rent to become due for that year, which is, obviously, not embraced in a period of twelve months, reckoning from the beginning of the lease, or does it mean that he has a lien for the rent to become due in the second year, upon the construction that the lease begins with each year covered by it, and that reckoning from such beginning, any part of the second year is within the "current contract year?"

Speaking of liens, I fear it would be just ground for criticism did I fail to remind you that an act was passed fixing a lien upon the progeny of live stock in favor of the owner of the paternal author of such progeny. It is doubtless an important piece of legislation. It was certainly thought to be so by the representatives of the people; for, otherwise, they would not have suspended the rules to pass it as an emergent and necessary act.

For particulars I beg to commend the enactment itself to your perusal and reflection. [Act of April 3, 1889. Gen. Laws, 115.]

## MUNICIPAL CORPORATIONS.

Although these bodies are, in the main, created to operate as political agencies, yet their powers and liabilities are so often the subjects of judicial inquiry that mention of legislation affecting them, at least in some relations, can not with propriety be omitted.

By amendment of article 375, Revised Civil Statutes, it is made the duty of cities to require their able bodied male inhabitants above eighteen years of age, except ministers of the gospel, to work on the streets, or furnish a substitute to work, or pay money in lieu of work, for not exceeding five days each year. [Act of March 30, 1889. Gen. Laws, 2.]

Article 421, Revised Civil Statutes, is so amended as to eliminate the provision protecting bonds from invalidity if sold for less than their par value, and to authorize the investment of the sinking fund provided for their redemption in bonds of the United States, of the State of Texas or of the counties thereof. [Act of April 3, 1889. Gen. Laws, 2, 3.]

Article 426, Revised Civil Statutes, is so amended as to restrict the taxation of cities of more than ten thousand inhabitants to a rate not exceeding one and one half per cent ad valorem, and taxation to that limit, made for the year 1889, is validated.

A further tax of one-quarter of one per cent is authorized for the purpose of paying debts other than bonded debts, contracted prior to January 1, 1889. Funding warrants issued for such debts are not to be included in the limit of six per cent ad valorem prescribed by article 420 for the aggregate of bonds issued thereunder for retiring debts and for public improvements. A proviso excludes from the operation of the act cities organized under special charters, and declares that the act shall not be construed to validate debts contracted by cities without authority of law existing at the time of contract. [Act of April 8, 1889. Gen. Laws. 3.]

On March 28, 1883 (Gen. Laws, 36), an act was passed regulating the condemnation in cities and towns of property therein, for the purpose of opening or changing streets, or for water mains and sewers, and repealing article 478 Revised Civil Statutes, relating to that subject. The act appears in Sayles' Civil Statutes as article 478.

It is so amended by an act of April 8, 1889, repealing said article 478, as to confer upon water works corporations the power to condemn property necessary for the construction of their works, "when deemed necessary to preserve the public health." [Gen. Laws, 3, 4.]

The peculiarity of the amendment is that it seems open to the construction that the function of determining whether or not their works are necessary to preserve the public health is conferred upon the water works corporations themselves.



The rapid extension of these corporations seems to render appropriate this brief reference to the terms of the amendment.

An act of April 4, 1889, authorizes counties, through their commissioners' courts to compromise, settle and fund all debts created prior to January 1, 1889, by issuing bonds with interest coupons at a rate not exceeding six per cent, payable annually, to be sold for not less than their face value. [Gen. Laws, 89, 90.]

#### OTHER CORPORATIONS.

Article 2916, Revised Civil Statutes, defining the capital stock of insurance companies organized in this State, is so amended as to omit United States bonds as a permissible form of such capital stock, and to substitute in lieu thereof the bonds of counties or incorporated towns or cities of the State. [Act of April 8, 1889. Gen Laws, 11.]

By act of April 3, 1889, every foreign corporation for pecuniary profit, except railway corporations, and such corporations as the law requires to procure permits from the Commissioner of Insurance, must, before doing or soliciting business or establishing an office in this State, file with the Secretary of State a certified copy of its charter, whereupon that officer will issue to it a permit to do business for a period not exceeding ten years. Such corporation already embarked in business here, is allowed four months to file its charter. No suit can be maintained by such corporation unless it shall have complied with the requirements named at the time its cause of action arose. [Gen. Laws, 87, 88.]

With respect to this act, private professional discussion has already developed this question: Is a foreign corporation, chartered for a purpose not expressly inhibited to corporations by the Constitution of this State, and yet not embraced in our statutory enumeration of purposes for which corporations may be organized, entitled to file its charter, and execute its purpose here?

Companies organized under the laws of other States of the United States for life or casualty insurance on the assessment or natural premium plan, and having as much as one hundred thousand dollars cash assets invested as required by laws regulating other insurance companies, are, by an act of the same date, required to be licensed by the Commissioner of Insurance to do business in this State, upon certain conditions prescribed by the act. The act does not apply to mutual benefit organizations, such as the Order of Chosen Friends or Knights of Honor. [Gen. Laws, 98 99 ]

A variety of amendatory and original acts relate to railroads. Some of these demand notice.

Article 4278, Revised Civil Statutes, is so amended as to declare forfeiture of the corporate existence of any railroad corporation organized thereunder, in the event that the railroad corporation shall not, within two years after filing and recording its articles of

association, begin the construction of its road, and construct, equip and put in good running order at least ten miles thereof; or in the event of its failure after the first two years to construct, equip and put in good running order twenty additional miles every year till its line is completed.

Urban, suburban and belt railroad companies, operating over lines of less distance than ten miles from city or town limits, are not affected by the act, but each company is required to finish a portion of its road and run cars thereon within twelve months from the date of its charter. [Act of April 8, 1889. Gen. Laws, 17.]

By a prior act, approved January 26, 1889, for the relief of railway companies chartered since January 1, 1887, and failing to comply with said article 4278, the time prescribed by that article for the construction, equipment and operation of roads is extended to January 1, 1891, and any such company having forfeited its corporate existence by noncompliance with article 4278 in less than sixty days prior to the passage of the act, is declared to be restored thereto and to all its rights. [Gen. Laws, 20.]

In so far as these acts relate to corporations other than those operating urban or suburban roads, it is not improbable that controversies will arise as to whether both are operative, and if not, which is.

The earlier act relieves from forfeiture accruing from noncompliance with article 4278 within sixty days prior to January 26, 1889, and extends the time limited by that article for the beginning of construction, equipment and operation of road to January 1, 1891. The later act denounces forfeiture for failure to begin construction, and to construct, equip and put in running order ten miles within two years after filing and recording articles of association, or for failure to add twenty miles every year after the first two years until the line is completed.

Recent public events have familiarized us with the legislation requiring railroad companies to maintain their general offices in this State, and no further reference thereto is necessary. [Act of March 29, 1889. Gen. Laws, 130.]

Chapter 11 of title 84, Revised Civil Statutes, is amended by adding thereto article 4260a. The first section authorizes the purchasers of a sold out railroad company and their associates to form a corporation for the owning and operating of the road by filing a charter under the first chapter of said title, and confers upon the corporation so formed all powers and privileges given by law to chartered railroads, including the power to construct and extend, provided that the road purchased shall be subject in the hands of the new corporation to all liabilities existing against it while owned by its purchasers; and that such purchase and organization shall revive no rights under any former charter or law in conflict with the present constitution; and that no main track once constructed and operated shall be abandoned or removed.

The second section inhibits any company availing of the privi-

leges conferred by the act from claiming, by reason thereof, to be under the jurisdiction of the federal courts, upon pain of ipso facto forfeiture of its re-organization. [Act of March 29, 1889. Gen. Laws, 19, 20.]

A law much with the current of public sentiment is that authorizing railway passenger carriers to provide separate railway carriages for white and colored passengers, and emphasizing their separation by appropriate penalties. [Gen. Laws, 132, 133.]

To promote the settlement of claims not exceeding fifty dollars against railroad companies for personal services or labor, or for damages, or for overcharges on freight, or for stock killed or injured, an act of April 5, 1889, provides that such claims, verified by affidavit, may be presented to the company complained of, by filing it with a station agent of the company in any county where suit therefor will lie; and, unless the claim is paid after thirty days, upon recovery of judgment thereon in the proper court of jurisdiction, such judgment shall include attorney's fee, in case the claimant has an attorney employed, not exceeding ten dollars. [Gen. Laws, 131, 132.]

Chapter 8, of title 84, Revised Civil Statutes, is amended by the addition thereto of article 4205a, whereby the court wherein any railroad company is sued for property occupied by it for railroad purposes, or for damages to such property, is, upon the company's cross bill, vested with jurisdiction of all matters in dispute between the parties, including condemnation of the property, the prayer for condemnation operating an admission of plaintiff's title to the property. [Act of March 19, 1889. Gen. Laws, 18.]

This enactment was intended, perhaps, to escape the effect of a decision of the Supreme Court, construing the law existing at the time of its rendition as vesting in the special tribunal thereby authorized (Revised Civil Statutes, article 4182 et seq.). exclusive jurisdiction of condemnation proceedings. (Galveston Wharf Company vs. Gulf, Colorado & Santa Fe Railway Company, 10 Southwestern Reporter, 537, citing Railway Company vs. Poindecker, 70 Texas, 98, and Railway Company vs. Benitco, 59 Texas, 326.)

By a joint resolution of April 8, 1889, an amendment is proposed to section 2, article 10 of the Constitution, enlarging that section by direct requirement that the Legislature pass laws to regulate railroad freight and passenger tariffs; and authorizing that body to realize the purposes and objects indicated by the section, by the creation and use of such means and agencies as it may deem adequate. [Gen. Laws, 171.]

#### TRUSTS.

An act to define trusts and to provide for penalties and punishment for its infraction by corporations, firms, persons and associa-

tions of persons connected with them, and to promote free competition in the State, was passed March 30, 1889.

A violation of any of its provisions by a domestic corporation forfeits the charter of such corporation; by a foreign corporation, operates a prohibition to transact business in the State; by a person, involves a fine not less than fifty dollars nor more than five thousand dollars, or imprisonment in the penitentiary not less than one nor more than ten years, or both fine and imprisonment. Any contract in violation of the act is declared absolutely void. The provisions of the act do not apply to agricultural products or live stock while in the hands of the producer or raiser.

A trust is declared to be a combination of capital, skill or acts, by two or more persons, firms, corporations, or associations of persons, or either two or more of them, for either any or all of certain purposes named in five several clauses of the first section.

Perhaps, with sufficient accuracy for this reference, the purposes for the accomplishment whereof a trust is prohibited may be said to be such as, if realized, involve the restriction of trade or production, or affect the price of merchandise or commodities, or prevent competition in manufacture, transportation, sale or purchase of merchandise, produce or commodities, or fix a standard whereby the price for any such thing or service shall be regulated; or unite by pool or combination any interest held in connection with such sale or transportation, so as to affect the price of the thing transported, or the price of its carriage. [Gen. Laws, 141, 142]

Professional opinion as to either the scope and meaning of the act, or its validity, is far from united, and differences of construction will scarcely be reconciled short of judicial interpretation.

#### RECEIVERS.

Connected largely with the subject of administrative justice, especially in suits whereto corporations are parties, is that of receivers.

An elaborate act was passed April 2, 1887 (Gen. Laws, 119-122; Sayles' Civil Statutes, arts. 1461-1470i), to provide for the appointment of receivers, to define their powers and duties, and to regulate proceedings under such appointments. Sections 2 and 6 of this act are amended at great length by an act of March 19, 1889. [Gen. Laws, 55-58.]

The entire act as amended demands more than casual notice.

After defining in the first section the cases wherein a receiver may be appointed "by any judge of a court of competent jurisdiction in this State," it proceeds in the second section to preclude from appointment as receiver of property in this State any person not a citizen and voter of the State and actually resident therein pending the receivership, and denounces against any corporation owning property in and chartered by the State, and securing the ap-

pointment as receiver thereof of such inhibited person the forfeiture of its charter, and requires the Attorney General to effect such forfeiture by quo warranto proceedings.

The succeeding sections prescribe specific directions for the administration of the property by the receiver, fix the venue of actions, impose limitations upon the court, create and declare liens and establish the order and priority of claims.

The terms used in defining the courts whose judges may appoint receivers are broad enough, under the decisions of the federal courts, to embrace said courts. [Ex Parte Schollenberger, 96 U. S., 377; Knott vs. Southern Life Insurance Company, 2 Woods, 482.]

Sooner or later many questions may arise as to the obligations of the federal courts sitting in Texas to follow and enforce the act. Among others, for example, this: In case of conflict between the orders of priority of claims established respectively by the act and by the general chancery practice as administered by the federal courts, would the former or the latter order be applied by those courts?

It is obvious that a law creating liens on, and declaring the order of their satisfaction out of a common fund, not only prescribes rules of practice and administration, but also creates rights with respect to property to be enforced by the jurisdiction having the possession of the property.

Considering the question suggested, we have on the one hand the oft repeated decisions of the federal courts that their equity jurisdiction is derived from the constitution and law of the United States, that their practice is regulated by themselves and by rules established by the supreme court; that their powers and rules of decision in suits in equity are the same in all the States, and that in all these respects they are unaffected by State legislation. [Noonan vs. Lee, 2 Black, 509; Payne vs. Hook, 7 Wall, 430; Boner vs. Chapman, 119 U. S., 600. See also as to power of chancery court to create liens on the trust fund and fix their priorities, Wallace vs. Loomis, 97 U. S., 146; Miltenberg vs. Loganport Ry. Co., 106 U. S., 309-12; Fosdick vs. Schall, 99 U. S., 235, 251; Union Trust Co. vs. Souther, 107 U. S., 594, 595; Union Trust Co. vs. Walker, Id., 506.]

On the other hand there are cases of equal authority which seem clearly to indicate that it is the duty of federal courts, in the event supposed, to enforce the State law.

A statute of Illinois allowed to the mortgagor of land twelve months within which to redeem after foreclosure sale of land. Pursuant to a bill for foreclosure of a mortgage on land, the United States circuit court, sitting in that State, made its decree, ascertaining the sum due on the mortgage and allowing defendant one hundred days to pay it, and in default of payment within that time ordering the special master to sell for cash, that being according to the course and practice of the court proceeding in equity, in such case.

The present Chief Justice of the United States Supreme Court, as counsel, removed the cause thereto by appeal, upon the contention, mainly, that the statute gave a substantial right, not contravening the Constitution, treaties or laws of the United States, which the court below was bound to enforce by its decree, although such enforcement plainly involved a departure from and violation of its rules and practice as a court of chancery.

This contention, after exhaustive argument of counsel on both sides devoted chiefly to it, was sustained by the Supreme Court, one member dissenting.

Commenting upon the familiar claim of the federal courts that they are not affected in their equity practice and administration by State statutes, the court says:

"We are not insensible to the fact that the industry of counsel has been rewarded by finding cases even in this court in which the proposition that the rules of practice of the federal courts in suits in equity can not be controlled by the laws of the States is expressed in terms so emphatic and so general as to seem to justify the inference here urged upon us. But we do not find that it has been decided in any case that this principal has been carried so far as to deny to a party in these courts substantial rights conferred by the statute of a State, or to add to or take from a contract that which is made a part of it by the laws of the State, except where the law impairs the obligation of a contract previously made." [Brine vs. Insurance Co., 96 U. S., 627, 639. Approved in Swift vs. Smith, 102 U. S., 450, and in Orvis vs. Powell, 98 U. S., 176.]

In a later case, twice argued, the same point was ruled by the same court; and the further point, that while in the absence of a statute prescribing the order of sale of parcels of mortgaged land a federal court would frame such order according to the doctrine of equity courts on the subject, yet where such order has been prescribed by State decision or statute it will be observed by such court in foreclosing a mortgage, without reference to the rule in equity. [Orvis vs. Powell, *supra*, 98 United States, 176.]

Having now finished the formal task imposed upon the President by the constitution, and realizing that your presence here evinces a sincere interest in the association and its high purposes. I venture to add for the information of those who may not have had access thereto, a few facts indicative of the growth and usefulness of the Bar Associations in this country.

For the most part, I am indebted for these facts to the admirable address of the Hon. Walter B. Hill, of the Macon bar, President of the Georgia Bar Association, delivered at the annual meeting of that body in 1888.

It appears that there are State associations, with substantially the same purposes, in active life and operation, and issuing annual publications of their proceedings and work, in Alabama, Arkansas, Colorado, Florida, Illinois, Kansas, Mississippi, Mis-

souri, New York, Ohio, South Carolina, Tennessee, Texas and West Virginia. Besides, there are quite a number of local city and county organizations in the various States, particularly in those of large populations and great cities. There are also two bodies styled national—one, the American Bar Association, organized in 1878; the other, the more recent organization, the National Bar Association.

The objects of the two last named are, in the main, not distinguishable from those contemplated by the State associations, save that they make the promotion of uniformity of legislation throughout the United States a special object.

To convey some idea of the great scope and aspiration of the American Bar Association, it is only necessary to mention that its by-laws require its President, annually elected, to open each meeting with an address communicating the most noteworthy changes not only in the federal statutes, but in the statutes of the several States as well.

Think of the herculean labor of such a task! And yet it is said to have been faithfully performed by each of the eminent men filling the post of honor and of toil—among whom are named Broadhead, Bristow, Phelps, Kernan, Lawton, Parker, Stevenson, Butler, Semmes and Wright.

The reports of these various associations are preserved in regularly numbered volumes, and an index appended to Mr. Hill's address discloses the many subjects discussed at annual meetings of the associations, with references to volumes and authors, the latter, in most instances, conspicuous by well earned fame as law writers, practitioners or judges.

These reports embrace a mass of legal literature, tracing the courses of the law's evolution; suggesting improvements in its forms, substance and administration, and abounding generally with reflections worthy of the profoundest thought and analysis of the profession. They may be truly said to constitute the library of advanced professional thought, and it is pleasing to observe in passing that they are marked by the labors of eminent gentlemen of our own bar.

Realizing what has been already accomplished, and encouraged to hope for yet greater results, let us resolve anew to perform faithfully that part of the common duty that falls to us, by multiplying and extending the usefulness of this association.

It is hoped that our membership will be enlarged by the accession of professional brethren throughout the State, as they become aware of the good cause that appeals for their co-operation.

The science to which our lives are dedicated exacts of each of us an honest, true hearted service along all the lines of effort that promise to simplify, perfect and exalt it, and the extent of that service should be measured by nothing but the individual's power to perform it.

# ANNUAL ADDRESS

DELIVERED BEFORE THE

## TEXAS BAR ASSOCIATION,

BY

GEN. S. B. MAXEY, OF PARIS BAR.

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I have at the outset the very agreeable duty of thanking the Texas Bar Association for the honor of selecting me to deliver the annual address. The association, composed of gentlemen of the profession to which I have devoted an active life, has in its ranks many of the ablest men of Texas, and, as a body, the Bar of Texas is unsurpassed by any like number of citizens in intelligence, in honor, in independence, in thought and action, in integrity, in patriotism, in all those high qualities which characterize true manhood.

In all ages, climes and countries the most fearless, and at the same time the most prudent, most enlightened defenders of the rights of the people, the most persistent and relentless foes of tyranny and despotism in whatever form, have been and yet are the legal profession.

From the very foundation of the government, the patriotism, integrity and intelligence of the bar have been fully recognized. Of the fifty-five delegates who framed the Constitution of the United States, thirty-six were lawyers; of twenty-three Presidents, seventeen were lawyers; of Presidents, Vice Presidents and heads of departments, from 1789 to 1888, inclusive, two hundred and ten were lawyers out of a total of two hundred and sixty-seven. In the Forty-ninth Congress, in the Senate, were sixty lawyers out of seventy-six members, and in the House, two hundred and thirty-five lawyers out of three hundred and twenty-five members, and in the last Congress sixty-one lawyers out of seventy-six Senators, and two hundred and twenty-five lawyers out of three hundred and twenty five Representatives. In the State governments the ratio is about the same. One hundred years of experience have shown that this great confidence was not misplaced.

The influence you are able to wield will, in the future as in the past, I have no doubt, be exerted in favor of law, order and wholesome government. What you believe right, proclaim.



What you believe wrong, denounce. The centennial of our national life under the Constitution, is a fit occasion for retrospect.

Mr. Madison, in his admirable paper, introductory to his notes on the debates in the convention of 1787, describes the condition of the country, and the causes which necessitated the convention, and adds: "Such were the defects, the deformities, the diseases, and the ominous prospects for which the convention were to provide a remedy; and which ought never to be overlooked in expounding and appreciating the constitutional charter, the remedy that was to be provided." These defects, deformities, diseases and ominous prospects may be gathered from the Madison papers, Bancroft's History of the Constitution, The Federalist and Elliott's debates—especially the debates in the State conventions which ratified the Constitution and the steps which led up to the convention may be found in Hickey's Constitution. I shall not trespass further than the development of the subject forces me, on the time of the association, by quoting at length from these valuable sources of information, relating to a most interesting period of our history, and which ought to be familiar to every lawyer, and, indeed, to every citizen. The deplorable condition spoken of by Mr. Madison, stated in a condensed form, was, in substance, this: The compact called "Articles of Confederation and Perpetual Union" between the States, was adopted by the Congress of States November 15, 1777, but had no binding force until ratified by all the States. They were not ratified by Maryland until March 1, 1781.

An examination of these articles will show that they were a rope of sand: They proposed to create a confederation and perpetual union between the States, yet deny to it the power essential to its preservation—the power to lay and collect taxes to meet the current expenses and exigencies of government. All that Congress could do was to ascertain the probable amount of money required, and make requisitions upon the States. If the States saw proper to meet them, all well. If not, Congress was powerless. In like manner the army had to be raised by requisitions on each State for its quota of troops. Congress had no power to regulate commerce with foreign nations, nor among the several States. It could not collect customs dues. In short, it was absolutely without the power of raising money except by loans, and it had no means of repaying them unless the States saw proper to furnish the money. It was deeply in debt to the army of the revolution and other creditors. Continental money, based on no available resources, became worthless. The collection of customs dues was exercised by the States having ports of entry for their own benefit, and this power was often oppressively exercised against those States having no such ports. New Jersey, between New York and Pennsylvania, was likened to a "barrel tapped at both ends." North Carolina, between Virginia and South Carolina, to "a man bled in both arms."

There was universal discontent among creditors of the government. There was no form and comeliness in the organization. The powers, such as they were, were not subdivided between co-ordinate departments. There was no President and no Judiciary, and but one House of Congress and that voted by States, the least State having an equal voice with the largest, and nine States must unite in favor of any measure to enact it, and when it is remembered that the States were rarely all represented, and, after the treaty of peace in 1783, often for weeks without a quorum, it will be seen what a weak and inefficient system it was. During the Revolutionary War these evils were not so glaring, because the external pressure of a common danger kept the States together, but the definitive treaty of peace with Great Britain removed that danger, and between 1783 and 1787 the union scarcely deserved the name. The ablest men, whatever their politics, agreed that something must be done or the union would be cast into the debris of dead republics.

No man saw the trend of events more clearly than General Washington.

As early as June, 1783, in a circular letter to the Governors of each of the States, General Washington said: "It is indispensable to the happiness of the individual States that there should be lodged somewhere a supreme power to regulate and govern the general concerns of the confederated republic, without which the union cannot be of long duration, and every thing must very rapidly tend to anarchy and confusion." And in his letter to Dr. Gordon, July 8, 1783, he avowed his wish "to see energy given to the federal Constitution by a convention of the people." No man was so effective in bringing about a convention of the people as James Madison. Of Washington's circular letter, an extract from which I present, Mr. Jefferson said "it was deservedly applauded by the world."

Hamilton was the earnest co-worker with Madison and others in securing a convention, and Madison, Hamilton and Jay were the authors of the *Federalist*, which exercised such a powerful influence in securing the ratification of the Constitution. Indeed the loftiest intellects of the time felt that, to save the union, something must be done, and speedily.

General Washington, in his letter to Governor Harrison, of Virginia, January 18, 1784, said: "An extension of federal powers would make us one of the most wealthy, happy, and respectable and powerful nations that ever inhabited the terrestrial globe. Without them, we shall soon be everything which is the direct reverse. I predict the worst consequences from the half starving, limping government, always moving upon crutches and tottering at every step." Even Grayson, whose political views accorded pretty generally with those of Richard Henry Lee, in a letter to Mr. Madison, in March, 1786, whilst referring to the report that Congress was about suggesting to the States the propriety of call-

ing a convention, said: "I have not made up my mind whether it would not be better to 'bear the ills we have than to fly to others we know not of.' I am, however, in no doubt about the weakness of the federal government. If it remains much longer in its present state of imbecility, we shall be one of the most contemptible nations on the face of the earth."

Virginia led off in the effort to secure a convention. On the twenty-first of January, 1786, the Legislature passed a resolution appointing commissioners to meet commissioners to be appointed by the other States, "to take into consideration the trade of the United States, to examine the relative situation and trade of the States, to consider how far a uniform system may inure to the common interest," etc., and to report to their several States. Several of the States, at the invitation of Virginia, appointed commissioners, and Annapolis was selected as the place.

The powers of the commissioners were substantially alike, except that New Jersey authorized her commissioners to consider the points above named "and other important matters."

The commissioners from New York, New Jersey, Pennsylvania, Delaware and Virginia met at Annapolis September 11, 1786, but as all the States were not represented, they did not undertake to do more than adopt a report urging the States to appoint delegates to a general convention to be held at Philadelphia on the second Monday in May, 1787, and directing copies of the report to be sent to the Governor of each State and to Congress. The States, with the exception of Rhode Island, complied with the suggestion, and appointed commissioners, Virginia leading off. Congress, on the twenty-first of February, 1787, recommended the expediency of the convention on the day designated "for the sole and express purpose of revising the articles of confederation." So at last, the convention was called. To the earnest, persistent efforts of the great men who inaugurated the movement, and never ceased until success crowned their efforts, the American people, and lovers of liberty throughout the world, owe a debt of lasting gratitude.

Before concluding this branch of the subject, let me say that the articles of confederation served a valuable purpose. They were at their adoption the best that could be had in the then condition of the public mind. Solon, when asked if the laws which he had given to the Athenians were the best that could be devised, answered: "They are the best they are capable of receiving." The answer was wise. The articles of confederation and perpetual union were the best our ancestors were capable of receiving at the time they were adopted, but time and experience enlarged their capacity, and enabled them to appreciate better laws.

#### THE CONSTITUTION OF 1787.

Monday, May 14, was the day fixed for the meeting of the convention, but for the want of a quorum, it was not organized until

Friday, May 25, when nine States appeared by delegates, to-wit: Massachusetts, New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina and Georgia. General Washington, a delegate from Virginia, was unanimously chosen president, William Jackson was duly elected secretary.

A few words as to the men who composed this great and, to the American people, all important convention. Mr. Madison, a delegate from Virginia, whose ability, thoroughness, zeal and efficiency were not surpassed, if equalled, by any member, says: "Of the ability and intelligence of those who composed the convention, the debates and proceedings may be a test, as the character of the work which was the offspring of their deliberations, must be tested by the experience of the future, added to that of near half a century which is past. But whatever may be the judgment pronounced on the competency of the articles of confederation, or whatever may be the destiny of the edifice prepared by them, I feel it a duty to express my profound and solemn conviction derived from my intimate opportunity of observing and appreciating the views of the convention, collectively and individually, that there never was an assembly of men charged with a great and arduous trust who were more pure in their motives or more exclusively or anxiously devoted to the object committed to them than were the members of the federal convention of 1787, to the object of devising and proposing a constitutional system which should best supply the defects of that which it was to replace, and best secure the permanent liberty and happiness of their country."

Mr. Bancroft says: "Discordant passions were repulsed by the solemnity of the moment; and as the statesmen who were to create a new Constitution, veterans in the war and in the halls of legislation, journeyed for the most part on horseback to their place of meeting, the high-wrought hopes of the nation went along with them. Nor did they deserve the interest of the people of the United States alone; they felt the ennobling love for their fellow men, and knew themselves to be the forerunners of reform for the civilized world. \* \* \* To many in the assembly the work of the great French magistrate on the 'Spirit of the Laws,' of which Washington, with his own hand, had copied an abstract by Madison, was the favorite manual. Some of them had made an analysis of all federal governments in ancient and modern times, and a few were well versed in the best English, Swiss and Dutch writers on government. They had immediately before them the example of Great Britain, and they had a still better school of political wisdom in the republican constitutions of their several states, which many of them had assisted to frame. \* \* \* In their standing rules they unanimously forbid any registry to be made of the votes of individuals, so that they might, without reproach or observation, mutually receive or impart instruction; and they sat with closed doors, lest the publication of their de-

bates should rouse the country to obstinate conflict before they themselves should have reached their conclusions."

Such is the estimate placed on the characters of the framers of the Constitution, by James Madison, the father of the Constitution, and by George Bancroft, America's great historian, and such the prudent steps the convention took to preserve their work from undue influence. The votes in the convention were, as you are aware, by States, each State having one vote. Questions of the gravest character sprang up at the very outset. The debates at times exhibited spirit, and more than once acrimony, yet all obstacles were bravely met, and seemingly irreconcilable views harmonized on some acceptable common ground. First. Should the convention amend the articles of confederation, and there stop? Should they present to the people a Constitution without regard to the articles of confederation? This vital and initial point was settled in favor of a new Constitution, such as in the judgment of the convention was best adapted to the needs of the people. It was urged in the debate on this point that the resolution of Congress limited their labors "to the sole and express purpose of revising the articles of confederation and reporting to Congress and the several Legislatures such alterations and provisions therein as shall, when agreed to in Congress and confirmed by the States, render the federal Constitution adequate to the exigencies of government and the preservation of the Union." The answer was instant and conclusive, first, that the members of the convention did not derive their powers from Congress, but from the States respectively which commissioned them; secondly, that the Constitution was not to be binding until ratified by conventions of the people of the States respectively, the source from which at last Congress and the State Legislatures derived their authority; and hence, by whatever authority the convention acted, the Constitution submitted by them to the States, and ratified by the conventions of the respective States would be binding, not by act of the convention which framed it, but by the act of the conventions of the several States which ratified it and thereby made it their act. And thus it was decided.

Drafts of constitutions, resolutions, etc., were received, and, after an examination of their tenor, were referred to a committee of one from each State, called the Grand Committee, of which Mr. Rutledge, of South Carolina, was chairman, and after they were reported back were discussed at large in the convention as in committee of the whole. The main business was opened by Mr. Randolph, of Virginia, on the twenty-ninth day of May, who submitted the "Virginia plan" (chiefly the work of Mr. Madison), and delivered an able speech in its support. A plan seems to have been offered by Mr. Chas. Pinckney, of South Carolina, but at what time is doubtful. The New Jersey plan was offered by Mr. Patterson, of that State. On the thirtieth of May the con-

vention went into committee of the whole on the "Virginia plan," offered the previous day by Mr. Randolph.

It would extend this address much beyond the time to which I shall limit myself to follow the debates.

They were able and exhaustive. There was concurrence of opinion in the division of powers among three co-ordinate departments, but the executive department bristled all over with difficulties. First: Should the power be lodged in one, or more than one? Second: Should an advisory council be annexed to the executive? Third: By whom should the executive be appointed? Fourth: How long should the executive hold? Fifth: Should the executive be vested with the veto power, and if so, should it be absolute or qualified? Sixth: Should the executive be liable to impeachment? Seventh: What should be his salary? Other points as to the executive of less importance were discussed.

The legislative department gave rise to many delicate questions. How should the Senate be composed? Should the States have equal representation in the two houses, etc? This involved a long and serious debate, in which the views of the large and small States were wide apart. The slavery question sprang up and was discussed on the point as to whether slaves were to be counted in the votes for representatives, and also on the prohibition of the slave trade. The extent of power to be entrusted to the federal government was a grave question.

Impeachment, and of whom the court should consist, and many other questions of grave importance had to be settled. There were times when it seemed impossible to come to an agreement. Happily, the noble men who composed the convention were impressed with the belief that a failure to agree upon a constitutional charter meant anarchy, and all differences were reconciled, and on the seventeenth day of September, 1787, the work of the convention was completed, and the Constitution signed by all the States (except Rhode Island), each State signing by its duly appointed deputies. It will be remembered that Rhode Island did not participate in the convention. Of the great work of the convention Mr. Bancroft says: "There were other precursors of the federal government, but the men who framed it followed the lead of no theoretical writer of their own or preceding times. They harbored no desire of revolution, no craving after untried experiments. They wrought from the elements which were at hand, and shaped them to meet the exigencies which had arisen. The least possible reference was made by them to abstract doctrines. They moulded their design by a creative power of their own, but nothing was introduced that did not already exist, or was not a natural development of a well known principle. The materials for building the American Constitution were the gift of the ages."

## THE CONSTITUTION.

The Constitution, after framed by the convention, was, according to its terms, submitted for ratification to the people of the several States in convention assembled. General Washington, in presenting it to the States, as president of the convention which framed it, said: "The Constitution which we now present is the result of that mutual deference and concession which the peculiarities of our political situation rendered indispensable."

The great struggle was yet to come. Some of the ablest men of the United States arrayed themselves against the ratification. R. H. Lee, Grayson and Henry, in Virginia; Yates, Lansing, Melancton Smith and Governor Clinton, in New York. Hamilton was the bulwark there. The great weight of Washington, of Madison, of Marshall, who became "the great Chief Justice," carried the Constitution in the Virginia convention against all opposition. General Washington, in a letter to Charles Carter, December 14, 1787, said: "If another federal convention is attempted, the members will be more discordant than the last. They will agree upon no general plan. The Constitution or disunion is before us."

The battle ground was in Virginia, New York and Massachusetts, and in those States the contest was fierce. The Constitution was ratified by conventions of the States in the following order: First, Delaware, December 7, 1787; second, Pennsylvania, December 12, 1787; third, New Jersey, December 18, 1787; fourth, Georgia, January 2, 1788; fifth, Connecticut, January 9, 1788; sixth, Massachusetts, February 6, 1788; seventh, Maryland, April 28, 1788; eighth, South Carolina, May 23, 1788; ninth, New Hampshire, June 21, 1788; tenth, Virginia, June 26, 1788; eleventh, New York, July 26, 1788; twelfth, North Carolina, November 21, 1789; thirteenth, Rhode Island, May 29, 1790. With the ratification of the ninth State (New Hampshire, June 21, 1789,) the Constitution became, according to its terms, "the Constitution between the States so ratifying the same."

In Massachusetts Elbridge Gerry threw his influence against its adoption, and whilst at the outset, its defeat seemed inevitable, yet the great weight of Bowdoin, Hancock, Theophilus Parsons, Gorham,—and greater than all—Samuel Adams, carried it safely through by 187 votes in favor, to 168 against it. In Virginia a debate of extraordinary ability was participated in by the giants of that noble State. But the Constitution was carried by 89 in favor, to 79 against. In New York Hamilton, Jay and Benson, were the master spirits in favor of the Constitution: George Clinton, Melancton Smith, Yates and Lansing, against. The final vote was by a small majority in favor of the Constitution. In the other States there were no dangerous opponents. Thus, after years of delay, of doubt and anxiety, the constitutional

union was formed, granting to the federal government such powers as were necessary for an efficient government, and reserving to the States respectively, or to the people, all others. It is not my purpose to discuss its specific provisions, save the last article in the Constitution, which declares: "The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same." The language is too clear and explicit to leave room for the slightest question as to the authority by which the Constitution was established, yet strange to say, the Constitution, even on this point, has been perverted. Mr. Bancroft in his history of the Constitution presents the whole case in a nut-shell: "Is it asked who are the people of the United States that instituted the general government? The federal convention and the Constitution answer, that it is the concurring people of the several States. The Constitution is constantly on its guard against permitting the action of the aggregate mass as a unit, lest the whole people, once accustomed to acting together as an individual, might forget the existence of the States, and the States now in union, succumb to centralization and absolutism. The people of the States demanded a federal convention to form the Constitution; the Congress of the confederation, voting by States, authorized that federal convention; the federal convention, voting likewise by States, made the Constitution; at the advice of the federal convention, the federal Congress referred that Constitution severally to the people of each State; and by their united voice taken severally, it was made the binding form of government. The Constitution, as it owes its life to the concurrent act of the people of the several States, permits no method of amending itself except by the several consent of the people of the States; and within the Constitution itself, the President, the only officer who has an equal relation to every State in the union, is elected—not by the aggregate people of all the States, but by the people of all the several States according to the number of voters allotted to each of them." (2 Bancroft's His. of Con., 333, 334.)

Mr. Madison says: "It is to be the assent and ratification of the several States, derived from the supreme authority in each State, the authority of the people themselves.

"The act therefore establishing the Constitution will not be a *national*, but a *federal* act." (Federalist, No. XXXIX.)

If anything more than the plain letter of article 7, and the unanswerable arguments of Mr. Bancroft and Mr. Madison, "that the Constitution was *not* made by the aggregate people of all the States, but *was* made by the people of the several States" is desired, the proceedings of the convention furnish it. I am aware that the illusory argument that the Constitution was the work of the people of the United States *in mass*, is sought to be drawn from the expression in the preamble: "We, the people of the United States, in order to form a more perfect union," etc. The



argument is without strength. By referring to the "articles of confederation and perpetual union" between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, "it will be seen that the first article gives the name of the confederation. Article 1. The style of the confederacy shall be "The United States of America." So the style of the union established by the Constitution retained the name adopted by the confederacy, and yet the second article of the confederacy shows that it was simply a league or compact of sovereign States. Article 2. "Each State retains its sovereignty, freedom and independence, and every power, jurisdiction and right which is not expressly delegated to the United States in Congress assembled."

By reference to the proceedings in the convention you will readily see why, in the final draft of the Constitution, the names of the States were omitted.

The first draft of the Constitution as it had been voted by the convention was reported by the committee of detail (Rutledge, chairman), August 6, and reads: "We, the people of the States of New Hampshire, Massachusetts, Rhode Island and Providence Plantation, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, do ordain, declare and establish the following Constitution for the government of ourselves and our posterity:

"Article 1. The style of the goverment shall be 'The United States of America.'

"Art. 2. The government shall consist of supreme, legislative, executive and judiciary powers. (Madison Papers, vol. 2, p. 1226.)

"In convention Tuesday, August 7, 1787, this occurred: 'The report of the committee of detail being taken up, \* \* \* the preamble of the report was agreed to *nem. con.*' So were articles 1 and 2." (Madison Papers, vol. 3, p. 1243.)

By referring to the report which was the draft of the Constitution, the twenty-first article reads: "The ratification of the conventions of ——— States shall be sufficient for organizing this Constitution." Article 21 was taken up August 30. The blank was filled on motion of Mr. Randolph with nine, and Mr. King moved to add (August 31) at the end of article 21 the words "between the said States," thus confining the operation of the government to the States ratifying it. This amendment was adopted, and article 21, as amended, reads: "The ratification of the conventions of nine States shall be sufficient for organizing this Constitution between the said States." (Madison Papers, vol. 2, p. 1226; vol. 3, pp. 1468-1470.)

September 5, "Mr. Gerry moved to reconsider article 21." (Vol. 3, p. 1497.)

September 10, reconsideration carried (Vol. 3, p. 1536-1539), and on full discussion on reconsideration of article 21 was *again adopted unanimously*. (Ib., 1541.)

On the twelfth of September the committee on style, through Dr. Johnson, made their report. (Ib., 1543.)

The committee had to revise the style and arrangement of the articles. Article 21 became article 7, as arranged in the Constitution. In the report of the committee on style, September 12, the preamble reads as we find it in the Constitution, "We, the people of the United States," etc. The pertinent inquiry arises, why were the names of the States embodied in the report of August 6 left out of the report of September 12? The answer is clear and conclusive. By adopting article 21, now article 7, to wit., "the ratification of the convention of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same," it was quite clear that the convention believed that all the States might not ratify. And this is perfectly manifest from the debate on Mr. Hamilton's resolution, after the motion to reconsider had been carried.

Mr. Wilson, one of the ablest men, and without a superior as a lawyer, in the body said (See vol. 3, 1539, 1540): "That it was worse than folly to rely on the concurrence of Rhode Island. Maryland had voted on this floor for requiring the *unanimous* consent of the thirteen States to the proposed change in the federal system. New York had not been represented for a long time past in the convention," etc. Mr. Clymer and Mr. King opposed Mr. Hamilton's plan. Mr. Rutledge took the same view, and on Mr. Hamilton's motion to postpone article 21 in order to consider his plan, the vote stood *one* for postponement and *ten* against it, and then after full debate, article 21 was *again agreed to unanimously*. This was on the tenth of September; and on the twelfth the committee on style made their report which was in exact accordance with the action on the tenth, for it would have been folly to have incorporated all the names of thirteen States, when they had already agreed that the ratification of nine States should be sufficient to establish the Constitution between the States so ratifying the same. If ten ratified, well; if eleven, well; if twelve, well; or thirteen; but if one, two, three or four did not ratify, it would have been a solecism to incorporate the names of the non-ratifying States in a Constitution to which they were not parties, and by which they were not bound, but by which the ratifying States were bound. The committee on style therefore wisely changed the preamble as agreed to by the convention to the form, "We the people of the United States," which would be equally appropriate to nine States united or whatsoever number might unite and make "United States" or "States united," and thus changed, the report was adopted.

The Constitution beyond cavil was established by the very au-

thority designated in its face, that is, by the ratification of conventions of the States, to all of which the Constitution was submitted, and by all ratified.

I have presented the history of this matter because the construction has been placed on the expression "We, the people of the United States," that it referred to the whole people of the United States in mass, which is historically untrue; in palpable violation of the spirit and purpose of the convention which framed the Constitution; of the States which ratified it, and is at variance with the genius and spirit, as well as the very letter of the Constitution, as shown by article 7. As it refers to the source of power from which the Constitution is derived, it is vital.

A few observations on the general plan and purpose of the Constitution and its marvelous success in accomplishing all the great purposes set forth in the preamble, the formation of a more perfect Union; insuring domestic tranquility, providing for the common defense, promoting the general welfare, and securing, as we sincerely hope, the blessings of liberty to our people and their posterity forever. It has done more. Its beneficent rays reach every civilized nation of earth, and to-day the people of all civilized countries have a better understanding of the objects of government, and the reciprocal rights and duties of governors and governed than ever before. At the time the Constitution was established we were happily situated to appreciate it. I have pointed out the weakness of the confederation. The experience gained in the years preceding, during and following the revolutionary war was of incalculable advantage in securing the establishment of the Constitution. From the first settlement of the colonies the people had been trained in self reliance and love of freedom. They had lived under State governments, which secured to them largely the blessings of freedom. They were isolated. No monarchical government was near them. The colonies were planted in the wilderness. No ancient prejudices had to be overcome. In this situation the Constitution was made, conforming to the genius of a free, manly, self reliant people. Lieber says: "The political writers who have tried to settle the question of government without reference to the material, the age and the wants of the people, have fallen into great errors. \* \* \* Governments were not made in the closet; you may proclaim a republic; you may write a constitution, but does it work? Is it a living thing?"

Our Constitution was adapted to the genius of our people. No other would have been. Hence its strength. Lieber says: "Constitutions are the assemblage of those publicly acknowledged principles which are deemed fundamental to the government of a people."

Our Constitution leaves no doubt as to the fundamental character of our government, and equally as little as to the grants of power by the States to the general government, and as to their

distribution among the co-ordinate departments. All this fully appears on the face of the Constitution in admirably plain English, as well as the fact that the power not granted is reserved to the States respectively and to the people. Of the value of a written Constitution, Lieber says: "Many a time has power been checked by the appalling consciousness: Thou art going to break the fundamental and established law of thy land; into thy hands it was confided, and thou becomest its assassin." Democritus, on being banished from Sparta, went into Persia, and was there asked: How was it that you, being king, could be banished? Answered: "It is because at Sparta the laws are stronger than kings."

The Supreme Court of the United States, whose reports sparkle with gems of wisdom, has to its honor and the good of mankind, immutably established that in this land of freedom, under a written Constitution, the Constitution is stronger than Presidents. In *Ex Parte Milligan*, 4 Wallace, the case was of a man tried and sentenced to death by a military commission sitting in Indiana, during the late war between the States. The commission was organized by authority of President Lincoln, and the sentence having been rendered after his death, was approved by Vice-President Johnson, acting as President. The case reached the Supreme Court on habeas corpus. That tribunal in restoring Milligan to liberty, speaking through Mr. Justice Davis, said: "Had this tribunal legal power and authority to punish this man?" After quoting the several clauses of the Constitution protecting the rights of persons in matters of trial, proceeds: "Time has proven the discernment of our ancestors, for even these provisions, expressed in such plain English words that it would seem the ingenuity of man could not evade them, are now after the lapse of more than seventy years, sought to be avoided. Those great and good men foresaw that troublesome times would arise when rulers and people would become restive under constraint and seek by sharp and decisive measures to accomplish ends deemed just and proper, and that the principles of constitutional liberty would be imperiled unless established by irrepealable law. The history of the world had taught that, what was done in the past might be attempted in the future. \* \* \*

"The Constitution of the United States is a law for rulers and people in war and peace, and covers with the shield of its protection all classes of men, at all times and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the wit of man, than that any of its provisions can be suspended during any of the great exigences of government. Such a doctrine leads directly to anarchy or despotism."

Sir James Mackintosh has happily said that nations are founded by "Time and Nature;" that "they can not be formed by the words and parchment of a diplomatic act." In 1815 he said: "One of the grand and patent errors of the French Revolution

was the fatal opinion that it was possible for human skill to make a government. It was an error too generally prevalent, but inexcusable. The American Revolution had given it a fallacious semblance of support, though no event in history more clearly showed its falsehood." The system of laws and frame of society in North America remained after the revolution, and remain to this day fundamentally the same as they were. \* \* \* The whole internal order remained, which had always been Republican."

In 1835 DeTocqueville, in "Democracy in America," expressed substantially the same views. A written constitution is the safeguard of the minority, and of the people in times of high excitement. The Constitution, notwithstanding strenuous efforts in the Convention to equalize the States in area, left them wisely just as it found them. They went into the Convention as equal States, and they came out equal co-ordinate States. The wisdom of our constitutional charter has been tested under circumstances that would shake the strongest and oldest governments of Europe. More than one hundred years have passed by since the government was organized under the Constitution. It is stronger to-day in the affections of the people, and more respected by the nations of the earth, than ever before in its history.

I conclude with these extracts, one from the father of the Constitution, the second from the grandest statesman of Europe, and the last from the greatest statesman of America. Mr. Madison, in the *Federalist*, December, 1787, whilst the Constitution was before the States for ratification, said: "Is it not the glory of the people of America that whilst they have paid a decent regard to the opinions of former times and other nations they have not suffered a blind veneration for antiquity, for custom or for name to overrule the suggestions of their own good sense, the knowledge of their own situation and the lessons of their own experience? To this manly spirit posterity will be indebted for the possession, and the world for the example of the numerous innovations displayed on the American theater in favor of private rights and public happiness. Had no important step been taken by the revolution for which a precedent had not been discovered, no government established of which an exact model did not present itself, the people of the United States might at this moment have been numbered among the melancholy victims of misguided councils: must at best have been laboring under the weight of some of those forms which have crushed the liberties of the rest of mankind. Happily for America, happily, we trust for all mankind, they pursued a new and more noble course. They accomplished a revolution which has no parallel in the annals of human society. They reared the fabrics of governments which have no model on the face of the globe. They formed the design of a great confederacy, which it is incumbent on their successors to improve and perpetuate. If their works betray imperfections, we wonder

at the fewness of them. If they erred most in the structure of the Union, this was the work most difficult to be executed; this is the work which has now been modeled by the act of your convention, and it is that act on which you are now to deliberate and to decide."

Happily, the people of the several States did deliberate; they did decide, and, most happily for the human race, they decided wisely and well, and our glorious Constitution is the result. Mr. Gladstone said: "As the British Constitution is the most subtle organism which has proceeded from progressive history, so the American Constitution is the most wonderful work ever struck off at a given time by the brain and purpose of man."

To this let me add the solemn admonition of Thomas Jefferson, the ablest statesman the world has ever known, in his splendid summary of the principles underlying our matchless system of dual governments: "The wisdom of our sages and the blood of our heroes have been devoted to their attainment. They should be the creed of our political faith, the text of civil instruction, the touchstone by which to try the services of those we trust; and should we wander from them in moments of error or alarm, let us hasten to retrace our steps and to regain the road which alone leads to peace, liberty and safety "



# ADDRESS

DELIVERED BEFORE THE

## TEXAS BAR ASSOCIATION,

BY

HON. O. M. ROBERTS.

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[Judge Roberts spoke mainly from notes, rendering it impossible for the secretary to obtain a full and complete report of his excellent address. The following synopsis of the address is taken from the stenographic report as published in the *Galveston News*, which, however, has not been revised by him, he having left Austin for the summer immediately after the adjournment of the association.]

Governor O. M. Roberts was introduced and delivered an address upon the subject of Law and Pleading. By way of introduction he said that he spoke as the law professor of the University. The attendance at the law school numbered about ninety-three scholars, which was about thirty in excess of what it should be. The trouble was that too many were in the law school who had not and never would have the proper qualifications for making lawyers.

He referred to the growing tendency which was filling the profession with useless drones from those who being unable to make a success at anything else in life, resorted to the practice or rather malpractice of law. In the University he endeavored to teach both of the great principles of government, the federal and democratic; the federal as taught in Massachusetts of common government, the democratic as taught in Virginia, the sovereign power of the States. While he taught both these great underlying principles upon which all law was founded, he did not fail to tell his pupils that he was of the Virginia school.

The paper that Governor Roberts proposed reading was, he said, from the manuscript of a book he was preparing on elementary work upon pleadings, not intending to supplant any work upon this subject now in use, but merely supplemental in its character. It was a work addressed to the student, and he hoped the mem-

bers of the convention would excuse the simplicity of his illustrations. With this preface he proceeded as follows:

One of the great difficulties, gentleman and Mr. President, on this subject, is to understand the relation between facts as they occur in ordinary transactions that become the subject of litigation, and facts that are embodied in the phrases of law and the relation between them. And with young men who merely study books there is a confused idea about what a rule of law is, that it is some effervescence that rises up, some idea, some obscure thing, a rule of law. Not a bit of it.

The object of this work is to explain and make students understand what are facts and what are rules of law, and the relation between them on the subject of pleading. This is important to be understood, especially in view of the statute which requires the judge in giving his charge to the jury to so frame his charge as to distinctly separate questions of law from questions of fact, and distinctly instruct the jury as to the law and submit all questions of fact to the jury. An attempt has been made in the succeeding pages to give some assistance to the students of law upon those subjects. Of course what is said on the subject of pleading is not intended to be a substitute for books on pleading, but rather to be an aid to them by presenting such elementary views as may give some aid in the proper understanding of them.

As in all rules of court, so in elementary books on pleading, it is taken for granted that the law student or practitioner would understand what are facts, and generally how they can be appropriately represented by words to meet the requirements of the rules of law pertaining to them. Without making an analysis of the facts necessary in pleading to exhibit the various contestable facts in the combination constituting the cause for action, it is also taken for granted that they would understand what are the rules of law, without analysis, or of their relation to one another. It follows that after the books and rules of court are studied, there still remains a confusion of ideas about what are facts and what are the rules of law, and how they are to be separated by the judge in his charge to the jury. Hence it requires practice in the courts to dispel this confusion. Surely the subject is not so abstruse that it may not be presented in a plain and easily understood manner. The effort will be made to do it for the benefit of those who will patiently peruse this explanation.

#### FACTS IN PLEADING — WHAT THEY ARE AND HOW TO BE REPRESENTED.

The province of the judicial department is to adjudicate and protect rights and redress wrongs in all matters of a judicial nature. A suit is an appeal to government, acting through its courts, to redress wrong inflicted and to secure rights endangered.



Judicial right is founded upon the relation of antecedent or present existing facts to existing rules of law. Preparatory to adjudging, the court must be informed of the facts of the wrong constituting the complaint, and of the facts offered in opposition to it, which results in building up a system of pleading in words appropriate to the facts presented. In written pleading such words should be used as would most exactly represent the facts with reasonable certainty relied upon.

Rules of law or legal conclusions should not be stated. Evidence from which facts are deducible should not be stated, but the facts which the evidence would prove. Evidence correspondent with the facts may be stated. General terms should not be used in pleading. The object of the pleader should be to state such a combination of facts as will amount to a *prima facie* cause of action when the law is applied, or, on the other side, as a defense to that action. Such a combination of facts as may be represented by the words written in pleading might be represented by the facts expressed by one word or by several words, and it might be represented by an affirmative or negative expression.

#### CONTESTABLE FACTS.

This may be illustrated by the following: A promised to pay B one dollar for work one day by B. B did perform the work one day for A. A has not paid B the one dollar so promised. Whereby B is damaged two dollars. A fact contested in the evidence on trial may be raised on the above statement of the case. That is, was the fact proved that A promised to pay one dollar? Was the fact proved that A was to pay it to B? Was the fact proved that it was one dollar that was to be paid? Was the fact proved that the work was done, and that it was the work contracted for? and so on through the whole statement.

The breach by non-payment being a negative fact, must be alleged in pleading and completing statement exhibiting right of action, though its proof in the first instance is not incumbent on the plaintiff. The fact of damage must be alleged, though its establishment follows from the proof of the preceeding facts constituting the cause of action. Practically, however, the facts are usually considered and treated of in a combination represented in sentences or parts of sentences, as A promised to pay B one dollar for work performed by B, but has not performed his contract, to the damage of B to the extent of two dollars. On these antecedent facts being ascertained in a trial, the court adjudges the legal consequences, to wit: the recovery of B from A of two dollars. Any part of the whole, or part of a sentence as above written, may become a fact on the trial of the case, and therefore they constitute what are called facts in pleading.

Another illustration: A did strike B with intent to injure him. Each principle in the sentence is divisible in regard to the fact

or facts that may be raised. For instance, is it a fact that A did strike any one, or was it B who was stricken, or was there a striking at all? Is it a fact that there was an intention of any kind having reference to B? Was the striking of B accidental, or if he did strike him, is it a fact that it was in malice? Here the fact that A struck B raises the presumption of intent to injure. Still, in pleading it is necessary to state it, because an intention is a fact in a combination of facts necessary to make a case of assault and battery.

Another illustration: A charge by words falsely spoken by A to E and divers other persons, that B stole the horse of E. Here it may be a contestable fact that A used the word stole, if an action for slander, or the word horse, of E. Now here is the rule for getting clear of superfluous matter, and if followed there can be no mistake about it, and the papers will not be filled as they are with an immense amount of old forms followed by imitation and old forms that have no sense to them and that confuse the pleader.

If there is anything alleged upon which a contestable fact can be raised that is not a necessary or pertinent fact in the instrument of pleading in which it is found to support its legal effect, it may thereby be known that such an allegation is insupportable.

Suppose in the slander case above referred to, the fact that A spoke the words to divers other persons besides to E be contested as to its truth or falsity, and issue be made on the trial. That would be an immaterial issue, because the action would be based on the fact that the words were spoken to E, and it would be no defense that they were not spoken to other persons.

Suppose the pleading, after setting out a note whereby the defendant became liable to the plaintiff for a certain sum of money, etc., in imitation of the old English form (I think it is time to depart from the English on the subject of pleading as well as other practical matters), and the defendant were to plead legal exclusion and allege that he did not become liable as represented in the petition, if not represented in the petition it would simply raise the question of fact. It should not be inserted in the petition. Thus we may arrive at a rule for the exclusion of surplus allegations, if facts have been stated sufficient in good pleading. An attorney ought to feel responsible that he states such facts, and only such facts as are essential in good pleading.

To this rule there is an apparent exception in giving descriptions of instruments, in which case the pleader must be held strictly to the description given, although such a particularity in description as used might not be required. This sort of error is sometimes committed in describing land and in other instruments. As a preparation for pleading the pleader should fully understand the rules of law as applicable to his case, and select and use only such facts as are attainable in regard to his case. The most appropriate words to represent the facts are to be found in the books of pleading, and which have been copied in many cases

from decisions in court, taking care to omit unnecessary and inappropriate allegations, which may be done by applying the tests under the above rule.

#### ANALOGY OF LAWS IN THEIR STRUCTURE AND RELATION TO OBJECTS IN NATURE.

Sir William Blackstone defines law in its most general sense to be a rule of action, and applies it to all objects animate and inanimate. Physical laws that are combined are produced by elements. Laws are pertinent to respective elements, and are harmonized in the combination by specific objects, these are subject to the laws of relation to other objects by which its specific condition may be modified, changed or destroyed. To make this plain, the pertinence of which will be seen hereafter, a limestone rock being a combination, has a relation to heat, a certain degree of which will modify its condition. So, too, wood in the fireplace has relation to other objects in nature, by which, when it is subjected to certain degrees of heat and the oxygen of the atmosphere will destroy its condition as wood entirely. This principle of law will be found to pervade all objects of nature, animate and inanimate, in some shape or other.

Its analogy will be found in the formation of municipal laws. When it is considered that all of our laws are made of a combination of facts, and that the whole system of laws consists of certain generally known rules of law, standing as prominent landmarks on the various subjects to which they are applicable, with other rules of law having relation to them, modifying, changing or destroying their operation.

In no branch of law is that principle more conspicuous and more important to be understood than in pleading, when we come to understand the formation of the rules of law and the changes made in them by other rules of law having relation to them.

#### FORMS OF PLEADING AT COMMON LAW.

It was a policy of the English courts to have established forms of pleading in all forms of litigation, and to allow evidence of fact differing as to facts to be given under general pleading. For instance, in actions for damages the fact of injury to person could be given in evidence, provided it was direct and not consequential injury. So in actions of trover, conversion, ejection and other forms of common law action in general.

#### CONFIRMATION OF RULES OF LAW.

The facts in pleading should have relation to the rules of law applicable to them, and should be correspondent either literally or in legal effect to the rules of law. The word rule in its primitive

sense is a physical action. In its derivative sense, when applied to law, it consists of words representing a combination of facts, which is made a standard, by which is determined the legality or illegality of certain facts which may occur, according to their correspondence. Of human actions it is seldom that any two consist of the same facts. It would be impossible for the government to anticipate and provide a rule for each one of the varying transactions that may occur. Therefore, in making the law, words are used which represent a combination of facts, which is set up as a standard to measure facts by.

A transaction might occur between two persons exactly corresponding in every particular to the facts herein represented as a standard for a general rule. This would be the case where A and B, being personally present at the same place, by words spoken, mutually agreed upon the terms of sale, and A hands to B the chattel sold, and B hands to A the consideration.

There are other rules of law consisting of their respective combinations of facts and the relations of facts contained in the general rules above stated, by which other facts than those stated in the general rules will have the same legal effect as those stated. Suppose A by his agent agrees with B upon the terms of sale. This brings in another application of the rule. If a man does by his agent he does by himself. Suppose the thing sold is not present, but in the hands of another person, at another place, and B gives an order to A for it, which is accepted. A delivery made by an order for the thing, if accepted by the purchaser, is a delivery; or suppose in such a transaction the agent of A agreed with the agent of B upon the terms of sale, and the agent of B gives an order for a thing which is accepted. In setting out the facts in pleading, it is sufficient to set out the fact that A did sell and deliver to B the thing named, and it would be improper in pleading to set out facts which in legal effect, as above referred to, amount to a sale and delivery. So, too, if the consideration was in the shape of bank bills and not gold or silver, and was received by A or B, in the pleading it would be sufficient to state that the consideration was so much money, because of the relative rule of law that paper money passing current, and called money, which is received in payment of money, discharges the debt the same as if it were gold.

Suppose in the suit for assault and battery the transaction was that A assaulted and did strike B, and B then struck A in self defense. That would bring in the principle that a person assaulted and stricken is justified and entitled to strike back sufficiently to protect himself. Suppose the order of transaction was the whipping of a pupil by a teacher, and in the suit it was alleged that A did beat, wound and maltreat B with intent to injure him. The pleading would set out in the defense that A was a teacher, B was his pupil, and that he did whip him but in a reasonable manner. This would bring in the rule that a teacher

has a right to whip his pupil in a reasonable manner. Now, I don't know whether this is the practice in the common schools now, as I haven't been in them much recently, but we don't follow it in the law class. [Laughter.]

Thus it is seen that a system of law is formed by general rules which may be relative or antagonistic, and by rules in relation to them which should be understood by the pleader in shaping his pleading. Generally it is sufficient to use the word representing a combination of facts in a cause of action.

#### FACTS TO BE STATED IN A PETITION.

As prescribed by the statute, pleading in Texas consists of a plea by the plaintiff and answer by the defendant. In the original petition should be stated such a combination of facts as in view of the law to which it is applicable, would represent a prima facie right of action and the right of the plaintiff. The right of the plaintiff and wrong of the defendant are represented differently in different suits, according to the nature of the action.

In actions for injury to the person, as in action for assault and battery, it is unnecessary to state such facts as would exhibit the injury to the person. Proof of injury inflicted by another person is presumed in law prima facie and it is not necessary to state a fact presumed by law.

[The Committee on Publication regret exceedingly the inability of Judge Roberts to furnish them with an original manuscript copy of his address. He, however, telegraphed his consent that the report as contained in the *Galveston News*, might be published in the printed proceedings of the Association.]

REPORT  
OF THE  
COMMITTEE ON JURISPRUDENCE AND LAW REFORM  
BY  
ROBERT G. STREET, ESQ.

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*Hon. F. Chas. Hume, President of the Texas Bar Association:*

Your committee on "Jurisprudence and Law Reform" have thought that they would best discharge their duty by directing attention to the defective condition of the law of our State in a single matter, whose practical importance is testified by the very large number of cases now and for several years past occupying a great part of the time of our courts; that thus, through this association, if the recommendations of the committee should be deemed judicious, the interest of the press and the people, and of the executive and the legislature might be awakened, and some assurance given of the improvement of the law in that behalf.

DAMAGES FOR PERSONAL INJURIES.

The law of actions for damages for personal injuries is believed to be very defective; the time of our courts so largely occupied with such litigation; the uncertainty attending its practical administration so manifest; and the difficulty of reconciling accepted legal dogma in such cases with the sentiments of humanity they evoke so insuperable, it becomes a matter of high obligation that this association should make an effort for its improvement.

INTRODUCTORY REMARKS.

If the suggestions here made do not in all respects receive at once the favor of the association, especially if they be thought lacking in a degree the support of legal reason and philosophy, fair consideration will require it to be borne in mind that the present unsatisfactory state of our law on the subject has been evolved by judicial decision from the principles of the common law, and the inadequacy, therefore, of those principles to the requirements of our present condition in this respect must be admitted.

Moreover, when the existence of a cause of action, not involving turpitude, is clear on trial before a jury, or is admitted without submission to the courts, it is surely insufferable in a civilized state that the law should not furnish to the jury or the parties, as the case may be, some practical rule for the ascertainment, or approximation at least, of the amount the one party is entitled to demand and the other liable to pay. Legal reason and philosophy may, indeed, find their just expression in such case in the statement that the damages are to be considered as "compensatory," that "the measure is the loss of time, expense incurred, physical pain, mental suffering, and the permanency of the injury as causing pecuniary loss." But there is surely wanting here that element of certainty which is said to be the desideratum of all law, and which, in practical affairs, is considered to have a necessary relation to dollars and cents.

It may be assumed that no judge in this State fails in such case to inform the jury, in the general charge, that the damages are to be considered in the nature of "compensation," but it may be assumed with equal confidence that he will add, on request, "there can be no fixed measure of compensation for anguish of mind and pain of body, for the loss of time and care in business, or permanent injury to health and body, but the question must be left mainly to the sound sense and deliberate judgment of the jury."

If, therefore, it be objected to the fixing by legislative act of a certain amount as the maximum of recovery, that it will be a denial of just compensation to those whose damage may exceed that sum, it may be frankly replied that the whole doctrine of compensation is legal bosh; that "pain can not be measured by pence;" that the incongruity in expression and contradiction in sense of the rules so furnished by the courts are manifest to the slightest reflection. The compensation meant, however, though rarely so limited, is, doubtless, compensation *sub modo* only, a qualification that deprives the expression of *ad captandum* value, and of all value, except as a warning to the jury against the allowance of exemplary damages.

Nor is the soundness in legal theory of the accepted rule which awards to one three thousand or four thousand dollars on the basis of its purchasable power of an annuity equal to the wages he was earning, and, on the same ground, gives to another, of the same age and health, injured in the same way and in the same casualty, a million, intended to be at all admitted.

It is believed it is not improbable, on a careful review of all the elements that enter into one's voluntary subjection of himself to the risk of personal injury by the slight negligence of any one of an army of employes, it may be found that the common law rule, from which these results are deduced is too narrow to afford a just solution of the inquiry, and that instead of struggling ineffectually to compensate a passenger, thus injured on a railway for all

his conjectural damages, he is to be regarded in the light of a truer and higher reason, as, in some measure, himself accepting the risks of the adventure.

#### LIMITATION OF THE SUBJECT.

It is intended to restrict what is here said to those acts or omissions which constitute a fault, but are neither gross nor intentional, nor in violation of statutory provisions.

#### TEXAS LAW.

1. There is no statute in this State on the subject except that giving a right of action in case of death where a right of action would have existed had death not ensued.

2. The law of proximate or remote cause of injury, and of proximate and remote damage from the injury; the law of contributory negligence; the law with respect to the duty of employers to furnish proper machinery and appliances, and to use care in the selection of competent co-employees; the limitation of recovery to actual or compensatory damage, and the inclusion within these terms of mental anguish and bodily suffering; the law of new trials at *nisi prius*, and, as ordered by the Supreme Court, are generally the same in Texas as obtain in other States of the Union. But with regard to new trials, it should be observed that there is probably a stronger tendency with us to sustain the verdict, owing to the existence of a statute prohibiting the judge at the trial from charging or commenting on the weight of the evidence, than where similar statutes do not exist. Our courts also construe the term excessive damage, when proposed as a ground for trial *de novo*, to mean damages for which the evidence furnishes no satisfactory basis, or damages the amount of which show that the verdict was the result of passion or prejudice or arrived at from some improper motive.

3. Fellow servants within the meaning of the rule against recovery for injury caused by the neglect of one of their number, are defined with us to be those "who serve the same employer, labor under the same control and derive their authority and receive their compensation from the same common business." They are held to assume all risks incident to their employment. So it is held that a brakeman and engineer, and a brakeman and conductor on a railway train are fellow servants. The English rule, and the view advocated by Judge Cooley, are adopted by our court as contradistinguished from the view taken of the same question by the Supreme Court of the United States. It may be remarked, however, that the stringency of the general rule adopted by our court seems to have led to numerous qualifications and refined differentiations that may be regarded by some as detracting from the supposed value of the rule itself.



4. Damages in the nature of a *solatium* are not recoverable as actual damage in actions by parents for injuries to minor children, or in actions for injuries causing death.

#### GENERAL OBSERVATIONS.

The judicial treatment of damages for personal injuries by negligence is of modern growth and immature development. The general principles of the law of negligence are supposed to have been declared at a very early date, but while something of antiquarian research on the part of commentators only a few years since was necessary to supply adjudged cases illustrative of those principles even in their most general phases, modern instances not only crowd the dockets of our courts and fill the pages of our reports, but arising in such large part from the new use of machinery in the infinitely multiplied industries of the age and from the phenomenal progress of railroad carriage, they continually call for the application of legal principles under such novel conditions as necessarily to invoke limitations, modifications and amplifications not previously contemplated.

The flower of modern civilization would be without fragrance, its tree without fruit, were it not true that side by side with this material development and consequent amelioration of the conditions of mankind, there was a growth in the minds and hearts of men of a deeper sense and truer recognition of human rights, "*sic utere tuo ut alienum non laedas*" is a maxim in law and in social science upon which society must yet continue for ages to refine before anything like a clear and accurate definition of the limitation of the use by the beginning of the abuse shall be attained; and still longer must the struggle be continued to devise remedies, which shall be adequate to the nature of the injury inflicted.

There is an evolution in the law by judicial decisions without trespass on the domain of legislation that ever tends to the advancement of human justice. But the principles of the common law are inadequate accurately to define rights and remedies in cases arising from the modern condition of the varied relations of a vast number of employes engaged in the same common enterprise and involving the use of dangerous machinery and appliances, whereby, while the danger is greatly augmented, the supposed ability of employes by acquaintance with all the dangers of their employment to protect themselves becomes a heartless fiction.

#### LORD CAMPBELL'S ACT.

Evolution in judicial decision would never have given us Lord Campbell's Act, which, granting the right of action in case of death, though only adopted in England in 1846, has been since

followed by all the States of this Union, thus furnishing incontestable evidence of the appreciation of its wisdom, justice and humanity.

With what unaffected surprise would laymen learn that the denial of this right has rested for ages on no better foundation than the neglect of the Legislature to except the action from the operation of the common law maxim "*actio personalis meritis cum persona*," that this prohibition, originating in a primitive age, applied alike to all actions which we denominate personal in contradistinction to real; that it applied with equal force to contracts and to torts; that it was only by an act of Edward III that the former were excepted from its operation; that even now, under it, generally speaking, actions of tort unconnected with contracts do not survive. It surely requires no rapt vision to see that in a more sociably ordered state than we have yet attained many of the latter will also survive.

#### EMPLOYERS' LIABILITY ACT.

In 1880, after many attempts, there was adopted in England what is known as the Employers' Liability Act, by which the defense of negligence by a fellow servant is taken away and, saving all other defenses, damages not exceeding three years wages may be recovered. It was adopted as a concession to the sentiments of humanity that revolted at the barbarity and the untruth in fact of the legal presumption that one engaging in a dangerous employment contemplated the acceptance of all the risks of the negligence of his fellows. Nor should it be forgotten, that this rule evolved by the courts, is itself of modern origin. This doctrine was not distinctly announced in England until 1850, and in this country first by *Murray vs. Railroad Co.*, 1 McMull; S. C. in 1841, followed in the succeeding year by *Farwell v. Boston & W. R. R. Co.*, 4 Met., which latter case made an impression on the jurisprudence of England and of this country from which there is no relief but by legislative enactment.

#### RECOMMENDATIONS.

Your committee recommend that this association petition the Governor and the Legislature for the passage of a law:

1. Limiting recovery in case of personal injuries by the fault of another, neither gross nor malicious, where action might be maintained under the law as same now is, whether resulting in death or not, to a sum not exceeding five thousand dollars.
2. That when the action would otherwise have been subject to the defense of neglect by a fellow servant (saving to the defendant all other defenses), recovery may be had, whether resulting in death or not, not exceeding three years wages. These recommendations are intended as joint and not as several; they are to

some extent the complement of each other, and their separation would destroy the symmetry of the system proposed.

The latter may be regarded as a just concession to a spirit of humanity, as a repudiation of a legal fiction, without impairment of the supposed inducements by the present state of the law to care by employes, or notice of defects or neglects; the former as proposing a fair measure of public policy in lieu of the vague and impracticable theories now prevailing, and this too without sensibly diminishing any of the inducements to care on the part of the defendant that now exists.

Both will conduce to reasonable certainty, promote fair and amicable settlements between the parties, and restrain speculative litigation.



# REPORT

OF THE

## COMMITTEE ON DECEASED MEMBERS

BY

HON. NORMAN G. KITTRELL.

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*To Hon. F. Charles Hume, President of the Texas Bar Association:*

Your Committee on Deceased Members beg leave to report as follows:

On behalf of the committee I am able to present a report touching upon the life and character of the following deceased members. The committee has not intended to make any invidious distinction, but do not report upon others by reason of inability to obtain proper data by means of which to prepare proper and suitable sketches. Concerning these named below, no proper and formal action has been taken by the association to perpetuate a record such as the merits of our deceased brothers demand. I beg to report upon the following members: William Pitt Ballinger, Jacob Waelder, C. Anson Jones, R. C. Beale, James M. Anderson, Alfred S. John, P. H. Ward.

WILLIAM PITT BALLINGER.

At the time of Judge Ballinger's death appropriate proceedings were had in the courts of Galveston county and the Supreme Court and Court of Appeals, and the esteem and respect of his fellow citizens and their sincere sorrow at his death found various expressions, but it is meet and proper that the memory of one so justly respected and beloved, and who had so long adorned and honored the profession of the law, should receive tribute at the hands of those of his brethren who compose this association.

If he who has the honor to submit this report could command adequate language to express the sentiments of his heart nothing should be lacking to fill the measure of this tribute, but abler pens than his have essayed the task, and while fervor of sentiment and elegance of diction have contrived to enrich and beautify their utterances, yet they have not done more than justice to their theme.

William Pitt Ballinger was born in Barboursville, Kentucky,

September 25, 1825. He inherited from his paternal sire and grand sire vigor of frame and strong mental endowments.

In 1843 he came to Galveston, and when the war with Mexico began he promptly entered into active service, and gained distinction on the field.

Returning to Galveston at the close of the war, he renewed the study of the law that had been interrupted by hostilities, and in 1847 was admitted to the bar. In 1850 he was appointed United States District Attorney for the Eastern District of Texas, a position he filled with ability and distinction.

After the expiration of his term of service he pursued the practice of his profession with success in connection with his gifted kinsman, the late Thomas M. Jack. The composition of the firm was admirably adapted to the attainment of eminent success. Colonel Jack was not only by the courtesy, kindness and grace of his manner one of the truest gentlemen alive, but was also one of the most accomplished *nisi prius* lawyers at the bar of Texas.

The business of the firm, until its dissolution by the death of Colonel Jack in 1880, both in the importance of the litigation conducted by it and the pecuniary rewards received, was surpassed by that of no firm in Texas.

In 1871 Judge Ballinger was tendered a position on the Supreme Bench of Texas by the then Governor, Honorable Edmund J. Davis; but not being in sympathy with the political sentiment of the then existing administration, nor approving its general course and tendency, he declined the appointment.

In 1874 he was appointed and confirmed as Associate Justice of the Supreme Court, but resigned after only one day's service. The position appealed to his personal and professional pride and ambition, but duty to his family forbade that he should exchange the income of his profession for the inadequate salary of a Supreme Judge. How much was lost to the State by his declination of the position can never be rightly estimated.

In 1875 he was elected to the convention which framed the present Constitution, and had great hope that he would be able to render valuable service to his State, or to use his own language to a friend: "had the honorable aspiration to identify his name with such a Constitution as he would be proud to see made the organic law of his State."

The laudable desire was, however, doomed to disappointment, for in that convention he found a spirit prevailing with which he had no sympathy. While he found himself associated with many able and patriotic men for whom he had the highest personal esteem, yet he radically differed with the majority upon the most important provisions of the instrument they had been elected to frame.

Absolutely ignorant of all the arts of the politician, too honest and independent to be a demagogue, and nerved only by an unselfish and patriotic desire to do his "State some service," he

labored in vain against the tendency of the majority, but was unable to defeat the framing of a Constitution that was illiberal and unnecessarily rigid and inflexible in its provisions, and which has ever been and is now unworthy to be the organic law of this young and rapidly developing commonwealth.

Returning from the convention he voted against the adoption of the Constitution, and never afterwards held public office.

When a vacancy on the Supreme Bench of the United States occurred, with a cordiality and unanimity rarely manifested under like circumstances his professional brethren in Texas endorsed him for the position, and it is believed that only the demands of political partisanship to which the President yielded obedience prevented his appointment to a position that he would have filled with consummate ability.

Judge Ballinger can not be said to have possessed that subtle and indefinable gift men call genius, if genius consists in the possession of the capacity to arrive at correct conclusions by intuition and achieve triumphs without tire, but if it be, as has been said, that genius is the capacity for patient-labor then he was indeed a genius in the full meaning of the term.

He achieved success in the profession of the law, the most arduous of all civil pursuits, without the adventitious aids of wealth or influential kindred.

He made his own way unaided, and on that tablet where the names of successful lawyers are inscribed he carved his name with his own strong hand.

As speakers before juries, or in the role of practitioners in certain fields of practice, some men achieve reputation who have never "searched the depths and shoals" of legal learning, and who, when they come to be judged by the rigid tests of civil pleading and measured by the hard rules of law, are found wanting, for pre-eminently in the legal profession does there apply the doctrine of the "survival of the fittest."

Judge Ballinger was a great lawyer in all that term implies—industrious, intellectually and morally honest. Studious, patient and deeply learned in the principles and reason of the law, he evolved success where success was possible.

He was most of all a good man. He was not a professor of promiscuous friendships. He did not take every man to his heart or into his confidence. He tried every man by the safest tests of merit, and when he found them worthy, bound them to him by hooks of steel.

If he appeared at times reserved and cold, such appearance did not truly reflect his nature, but was the result of mental abstraction arising from the pressure of grave and weighty professional responsibilities, in the contemplation of which he was deeply absorbed.

His kindness to and consideration for those of his professional brethren whom he called his friends was proverbial. Not only

were the members of the bar of Galveston, but visiting attorneys, the recipients of his courtesy and the beneficiaries of his liberality.

In Galveston he began his career. Here amid those whom he had faithfully served that career ended.

Between that beginning and that end there were years of arduous toil, through all of which he was encouraged, sustained and comforted by the noble woman who blessed and brightened his life, and who survived him to mourn her irreparable loss.

The poor young lawyer lived to become the head of a bar which is not surpassed in point of ability by that of any of like size in the United States. He rose from obscurity to honorable renown; from poverty to affluence.

The humble cottage that had sheltered the young, struggling attorney and his bride did not give way to, but became a part of the stately mansion in which the distinguished lawyer dispensed to his friends, and especially to the members of the legal profession, an elegant, gracious, but unostentatious hospitality.

If some men misunderstood him, and refused him that meed of praise which as a lawyer and a man he so justly merited, those who knew him best, and before whom he went in and out each day, accorded him their unstinted respect and reverence. As lawyer, gentleman, husband, father and citizen he filled the measure of the loftiest standard. Conscious of the imperfection of this sketch, it is submitted on behalf of your committee in memory of William P. Ballinger by one who loved him living and mourns him dead.

#### JAMES MICHAEL ANDERSON.

Colonel James Michael Anderson was born in Laurence county, Alabama, July 24, 1824, and died June 2, 1889, at Waco, Texas.

He began life in poverty and amid surroundings highly unfavorable to success, but his evident merit and ability attracted the attention of a wealthy kinsman, who sent him to the Lebanon law school, where he completed his legal education.

In 1848 he settled in Rusk, Texas, and formed a legal partnership with Hon. Stockton P. Donley, who was afterward an associate justice of the Supreme Court of Texas.

Colonel Anderson was a member of the Secession Convention of Texas, and served in the Confederate army on the staff of Major General Walker. He was a candidate for the Confederate Congress in the eastern district of Texas, and was defeated by only forty-nine votes by Mr. F. B. Sexton, a gentleman of ability and high character, and great personal popularity.

In 1866 he removed to Waco, where he engaged in the practice of law and so continued until his death. He possessed a fine logical and analytical mind and was a thoroughly equipped lawyer and most entertaining conversationalist, and a genial and charming companion.

He was a faithful member of the Baptist church and one of the original members of this Association.

#### JACOB WAELDER.

Jacob Waelder was born in Germany in 1820, and came with his father to America at the age of thirteen years.

His education began in his native land and was continued in Pennsylvania and was renewed and finished in Germany.

He served with distinction in the Mexican war, and received honorable mention in the reports of several of the most important engagements of that struggle. He served three terms in the Legislature of Texas, the sessions of 1855, '57 and '59, and was a member of the constitutional convention of 1875.

He moved to San Antonio in 1852, and, in that city, in competition with many of the ablest lawyers of the bar of this State, he practiced his profession with conspicuous success until a short time previous to his death, which occurred August 28, 1887.

Colonel Waelder as a lawyer was profound and accurate. By education, order of mind and capacity for labor he was eminently fitted for the profession.

He achieved success because he was intellectually equipped for legal conflict.

He was uniformly polite and courteous. His demeanor was that of blended dignity and gentleness.

He was a consistent member of the Episcopal church, and was for thirty years a vestryman, and exemplified in his daily walk and conversation the faith he professed, which faith sustained him in the hour of final dissolution.

#### C. ANSON JONES.

Those of whom we have already spoken had both passed their three score years. We must now speak of one, the sun of whose manhood had scarce reached its noon, when it was forever darkened by death's impenetrable shadow.

When in January 19, 1888, Judge C. Anson Jones died in Houston, Texas, at the age of about thirty-seven, there passed away one of the ablest and purest of the younger lawyers of Texas. He inherited the vigor of intellect and independence of character which characterized his distinguished father.

After a very brief period of practice he was elected county judge of Harris county, and his administration of that arduous position was worthy of all praise. His mind was vigorous and logical, and his conception of legal principles was clear and correct; and he developed an admirable capacity for the dispatch and management of matters pertaining to the financial affairs of his county. Returning to the practice after six years of service on the bench, he secured readily a lucrative clientage, and as a counsellor had few superiors of any age at the bar of this State.



He was honest and outspoken, and had the courage of his convictions at all times, yet was modest and unobtrusive in demeanor. Whether in the practice, on the bench or as legal adviser of the municipal administration of Houston, he proved himself as capable as he was reliable and faithful.

By his death the profession of the law, the city of his residence and the State suffered a loss which was deeply felt and sincerely deplored.

#### ALFRED S. JOHN.

Alfred S. John was born in Bastrop county, Texas, July 9, 1853, and died February 5, 1889. He graduated in 1876 at the University of Georgetown, Texas, and in 1878 was admitted to the bar in Galveston. In the spring of 1880 he moved to Beaumont and associated himself in the practice with Colonel G. W. O'Brien, and the firm entered at once upon a lucrative practice. His ability and character were such as to command the confidence of the citizens of the home of his adoption, and he was chosen with practical unanimity mayor of the young and prosperous city of Beaumont, a position which he occupied at the time of his death.

His professional brethren and the people of the city of which he was a faithful chief magistrate, by resolutions, addresses and in other appropriate ways, testified to their respect for him as a citizen, lawyer and an official, and to the profound sorrow caused by his death.

His career was a striking illustration of the triumph of modest merit under adverse conditions, and his example is one worthy of all commendation and imitation.

#### RICHARD CHANNING BEALE.

Richard Channing Beale was born in Westmoreland county, Virginia, May 31, 1846, and died in Corsicana, Texas, June 9, 1889.

Judge Beale was essentially a gentleman, not only in the sense that he was familiar with all the usages and requirements of polite society, but in the loftier and truer sense of being a gentleman by birth, breeding and education. He traced his lineage through a race of gentleman, and the blood of cavaliers was in his veins.

He came to Texas in 1869, and settled in Corsicana, and achieved both a reputation and a competency as a lawyer.

He was singularly felicitous in speech, and possessed that divine afflatus that belongs as truly to the true orator as to the true poet.

As a forensic speaker he had few superiors at the bar of Texas, and the mesmerism of his eloquence, combined with his profes-

sional tact and the accuracy of his learning, enabled him to win repeated and brilliant legal triumphs.

In 1880 he was elected county judge of Navarro county.

The combination of qualities that fit a man at once for the duties of the forum and the bench are not often found in one man, and when one who has distinguished himself as an advocate and an orator is called to the bench, the first impulse of opinion is one of fear, lest in the latter position he may disclose a lack of those elements of character which are essential to success in a position where partisanship must be laid aside and every case be weighed in the nicely adjusted balances of the law.

If this apprehension of probable failure existed in the minds of any as to Judge Beale, it was soon allayed, for he displayed the same ability on the bench that had characterized him at the bar.

Retiring voluntarily from the bench, he addressed himself with diligence and marked success to the practice of his profession, and the firm of Beale & Autrey secured a share of practice second in importance and value to that of no firm at the bar of Corsicana, a bar which, taken as a whole, will compare favorably with any in Texas.

Kindly, genial and considerate, he won the esteem and regard of men of all classes and all shades of political belief. No more striking evidence of this fact could have been displayed than the memorial meeting held by the colored citizens of the city of his residence, at which they adopted resolutions testifying to his kindness to the people of their race, and to the respect and esteem for him, and their deep sorrow at his death.

A man who, while preserving to the utmost extreme those social distinctions and divisions which, by training, education, instinct and association, he had been taught to observe, could, by the gentleness and kindness of his nature, and his inherent sense of justice and right, call forth a tribute to his worth at once so touching and unique, must have been a man of rare attractiveness of character.

The author of this report knew Judge Beale, when, without a case, a client or an office, he was casting about for a location in the State, which he had selected as a home, and had the pleasure of seeing him when, after the lapse of a few years, his ability and merit had received their due reward in the confidence of his fellow citizens, the respect and esteem of his professional brethren and the rich and priceless jewel of the devoted love of a wife, to whom, now sorrowing and childless, the heart of every man who knew him must go out in deep and tender sympathy.

When his native State cast her destinies with the young nation that sprang into existence in 1861, "Dick" Beale, though a mere youth, not subject to military duty, promptly obedient to the impulses of chivalry and courage which he had inherited from a noble ancestry, girded on a soldier's armor and acted a manly part in the defense of his native land against an invading foe.

He professed the Christian faith, and was superintendent of the Sunday school of the Protestant Episcopal church of Corsicana, and the pastor and brethren of the church bear cordial and earnest testimony that he lived as became his profession.

Gentle, genial, kindly, gifted "Dick" Beale, may thy rest be sweet in the bosom of thy adopted State, and may the murmurs of the breezes that steal o'er thy resting place, mingling in melancholy cadence with the tones of sorrow rising from hearts that loved thee, tell thy gentle requiem.

PATRICK H. WARD.

Patrick H. Ward was born in South Carolina, and served in the Confederate army in which he lost a leg.

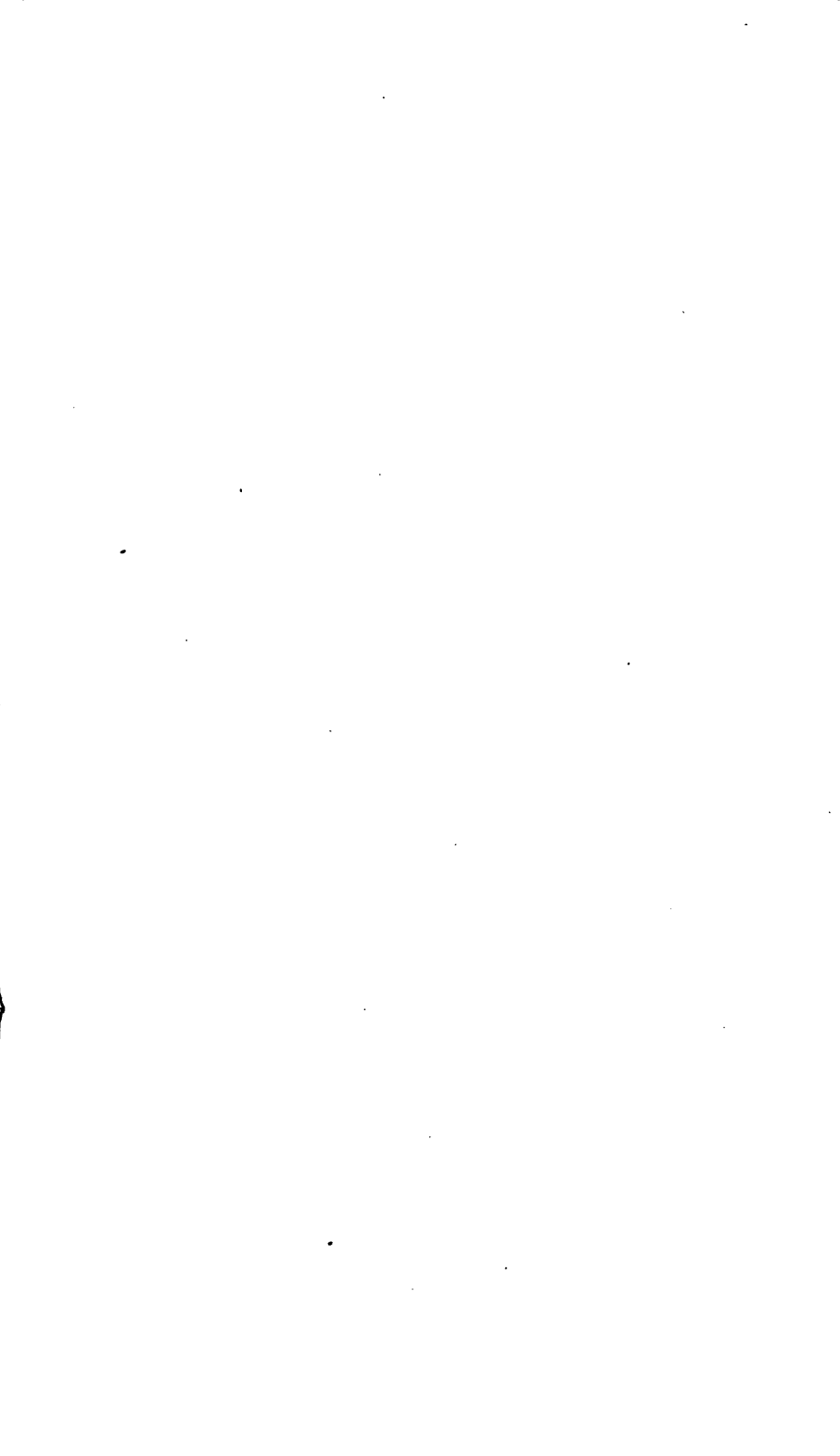
Removing to Texas, he settled in San Antonio and achieved success as a lawyer, being especially skilled in the intricate learning of real property.

He acquired not only a competency by his own efforts, but secured the respect and confidence of his legal brethren. He was an honorable, pure-minded gentleman and a consistent and faithful member of the Presbyterian church.

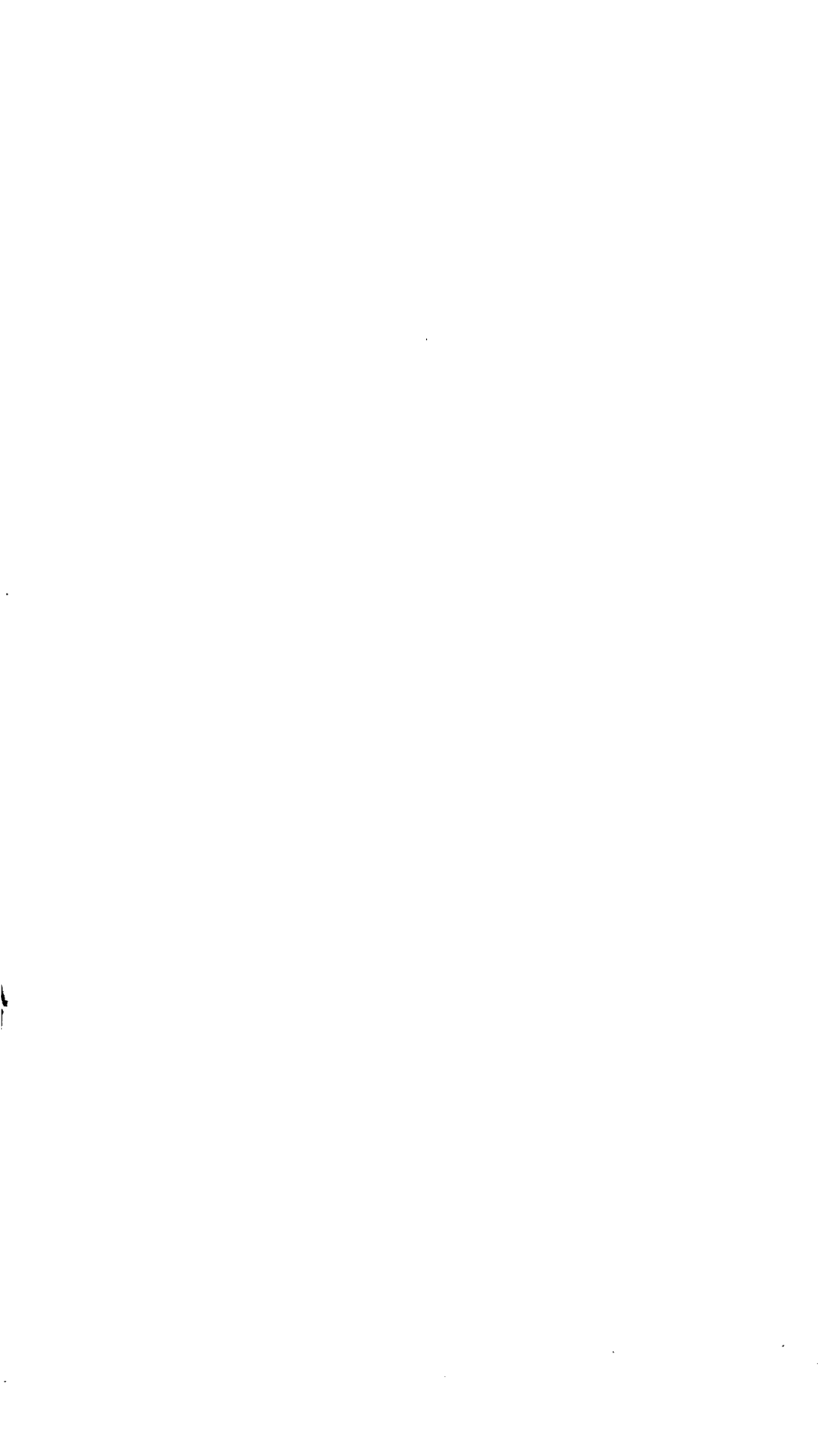
For some years previous to his death he had been afflicted with some disease of the eyes of such nature that it was by those skilled in the treatment of such troubles deemed necessary that the disease should progress to a certain stage before an operation could be successfully performed. Before this point was reached his vision had become so obscured that he could not recognize his dearest friends except by their voices. When the time had arrived when a successful operation seemed probable, he repaired to New York, where, by a skilled surgeon, his sight was restored, and under the impulse of the joy felt he wrote at once to those friends who had most tenderly attended upon him in his misfortune, assuring them of the deep pleasure felt that he would soon again see them face to face. But this joyous anticipation was never to be realized. An inscrutable Providence had willed it otherwise. On the eve of his departure he was seized with pneumonia and despite the best medical skill succumbed to the attack.

There was in the close of his life, under such circumstances, something, tenderly pathetic, and which seemed to intensify the sorrow of those who knew and honored him. To them, however, was left the consolation that he met fearlessly the grim conqueror, and that those eyes, long darkened here, caught in the parting hour the deathless rays of christian hope.

By the death of P. H. Ward, the bar of San Antonio and this Association, lost a worthy and noble member, and this imperfect tribute to his memory is but a proper meed of praise to one who lived and died as became a gentleman and a christian.















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